COMMISSION DECISION

of 12 July 1984

relating to a proceeding under Article 85 of the EEC Treaty

(IV/30.129 – Carlsberg)

(Only the Danish and English texts are authentic)

(84/381/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by the Act of Accession of Greece, and in particular Articles 6 and 8 thereof,

Having regard to the application for negative clearance and the notification filed, pursuant to Article 4 of Regulation No 17, on 12 June 1980 by De forenede Bryggerier A/S, also known as The United Breweries Limited, Copenhagen, and Grand Metropolitan Limited, London, concerning the Cooperation Agreement between them, 'the Lager Agreement', signed on 2 June 1980;

Having regard to the summary of the case published pursuant to Article 19 (3) of Regulation No 17 [2],

After consultation within the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

I. THE FACTS

A. THE UNDERTAKINGS

(1) De forenede Bryggerier A/S, also known as The United Breweries (UB) is a company incorporated in Denmark which was formed on 10 June 1970 by the merger of the companies Carlsberg Bryggerierne, indehaver Carlsbergfondet and Aktieselskabet De forenede Bryggerier, the owners of the Carlsberg and Tuborg brands respectively. The company (hereinafter referred to as 'Carlsberg') produces and sells under these brand names, through a large number of subsidiaries in the Federal Republic of Germany, France, Luxembourg, the United Kingdom and elsewhere, a range of bottom-fermented beers commonly known as 'lager'. In 1982/83 Carlsberg and its subsidiaries had an aggregate turnover of Dkr 7 177 000 000. It estimates its share of the lager market at 80 % in Denmark, 14 % in the United Kingdom [3] and less than 0,5 % in the rest of the EEC. On 1 May 1970, Carlsberg, which already owned three agencies for distributing its beer in the United Kingdom (in London, Goole and Edinburgh), set up a new company, Carlsberg Brewery Limited (hereinafter referred to as 'Carlsberg Ltd'), to brew its beer there in a large new brewery at Northampton. In 1981/82, Carlsberg Ltd and its three agencies had total sales of £ 123 575 000. Since 1981 the Northampton brewery has also brewed Tuborg beers, but another Carlsberg subsidiary, Tuborg Lager Limited, distributes them. The Tuborg brand has about 2 % of the British lager market.

(2) Grand Metropolitan Ltd (now plc) (GM) is the parent company of a British group with interests in the hotel and catering, food, brewing, wines and spirits and leisure sectors. In 1981/82 GM had a total turnover of £ 3 848 500 000. In 1972/73, Grand Metropolitan took over the breweries Truman and Watney Mann and merged them into the single subsidiary Watney Mann & Truman Brewers Limited (WMTB). WMTB's turnover in 1981/82 was £ 491 815 000, of which £ 214 859 000 (44 %) was from sales of lager. GM, with 11,5 % of the total UK beer market, is also in joint second position (with Allied

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No C 27, 2. 2. 1984, p. 4.
(3) Including sales of Carlsberg products brewed under licence by Watney Mann & Truman Brewers Ltd, a subsidiary of Grand Metropolitan.

Breweries) among the country's lager producers. GM supplies close on 24 000 on-licence outlets (i.e. licensed to sell alcoholic liquor for consumption on the premises), of which about half are tied houses committed to purchasing GM beer brands. It also sells to about 12 000 off-licence outlets (i.e. licensed to sell alcoholic drinks for consumption off the premises), about 1 000 of which are also tied to GM by long-term purchase agreements.

B. BACKGROUND OF THE LAGER AGREEMENT

Carlsberg breweries have been exporting their products, *inter alia* to the United Kingdom, for over a century. In the late 1960s they were sending a million hectolitres of lager beer a year to the United Kingdom, where it was distributed by the three agencies of Carlsberg. Because of the considerable increase in the volume exported and the forecast growth in demand, Carlsberg entered into negotiations with Watney Mann Ltd with a view to setting up a joint subsidiary to produce a number of lager beers under the Carlsberg brands. A 'Shareholders Agreement' was signed by Carlsberg and Watney on 1 December 1970 under which Watney subscribed 49 % of the share capital of the new company, Carlsberg Brewery Ltd, which Carlsberg had set up on 1 May 1970. A brewery with an initial capacity of 1 000 000 hl a year was built at Northampton and went into production in August 1973. Under a sales agreement, also signed on 1 December 1970, Watney was licensed to sell Carlsberg beers from its outlets. In October 1975, Carlsberg bought back Watney's holding in the previous joint subsidiary Carlsberg Ltd, but the distribution agreements whereby Carlsberg beers were sold through Watney's network of tied houses continued in force. When it became apparent that a doubling of production capacity at the Northampton brewery would not be enough to meet the growing demand for lager on the British market, Carlsberg entered in 1975 into a licensing agreement with GM as the parent company of the merged Watney Mann & Truman whereby GM was permitted to produce Carlsberg 1 030° (1) in the breweries belonging to the group and to sell it in the UK market. This agreement has now been superseded by a production and sales agreement, known as the Lager Agreement, signed by Carlsberg and GM on 2 June 1980, which is the subject of this Decision.

C. THE LAGER AGREEMENT

The purpose of the Agreement is to ensure optimum utilization by Carlsberg Ltd and WMTB of their production facilities for Carlsberg beers and to develop the sale of these products in the United Kingdom. The essential terms of the Agreement are now as follows:

(1) In recognition of Carlsberg's investment in UK brewing facilities to supply GM's requirements, GM undertakes to purchase a specified, large volume of lager beers from Carlsberg Ltd each year for the currency of the Agreement, that is until 30 September 1991. This minimum purchase commitment is increased or reduced in line with GM's total sales in the United Kingdom of lager of less than 1 040° original gravity (clauses 1, 1.1, 1.2 and 1.3).

(1.1) Should GM in any year fail to take up the agreed volume, except for reasons beyond its control, Carlsberg Ltd is entitled to compensation from GM (clause 1.9).

(2) Carlsberg may permit any company or companies other than GM to brew Carlsberg beers in the United Kingdom. However, if the brewings by such other companies for sale in the United Kingdom exceed in any year a certain number of barrels (2) the volume of lager which GM is committed to purchase from Carlsberg Ltd in that year is reduced by an amount equivalent to the excess (clause 1.8.1).

(2.1) GM is released from its purchase commitment should Carlsberg, without GM's consent, knowingly permit the volume of brewing of Carlsberg beer in the United Kingdom in any year by another company to exceed the sales of the products to that company's tied outlets (clause 1.8.2).

(1) The 'original gravity' of the beer (i.e. the specific gravity of the unfermented wort).

(2) 1 barrel = 163 litres.

(2.2) To enable it to check on compliance with the latter clause, GM is provided each year with an audited statement of the combined total brewings and sales to tied outlets by all such companies (clause 1.8.3).

(3) Carlsberg Ltd undertakes to supply GM with all its requirements of Carlsberg beers up to the level forecast each year by GM plus 10% (clause 4.1).

(3.1) If Carlsberg is unable to supply GM's requirements, the parties will confer to consider and agree upon the action to be taken to make good a shortfall in supply (clause 4.6).

(3.2) Carlsberg Ltd is not allowed to supply to GM without GM's consent Carlsberg beers which have been brewed by third parties (clause 4.8).

(4) The provisions on calculation of the prices which Carlsberg Ltd charges GM for supplies of each Carlsberg product stipulate that the invoiced price will be a weighted average of two prices (a standard price and a marginal price), based on the WMTB sales forecasts as previously agreed with Carlsberg Ltd for the year ending 30 September to which the price applies, such forecasts to be made during the month of June preceding the year in question (clause 3.1.9).

(5) Carlsberg grants to GM for as long as the Agreement is in force the right to produce and package at any of its breweries in the United Kingdom Carlsberg 1 030°, Carlsberg Carlsen Lite and any other Carlsberg beer of less than 1 040° original gravity which may be introduced during the currency of the Agreement, according to information, specifications and directions given by Carlsberg, in particular as set out in the Schedule to the Agreement (clause 5.1). The beers are produced by GM with Carlsberg's know-how and using a special yeast (Hanseniospora Valbyensis) which Carlsberg supplies to it. When the Agreement expires, Carlsberg will no longer be obliged to supply this yeast.

(5.1) Should Carlsberg change the previously agreed specification of any beer being produced by GM or for which GM has invested in production facilities, Carlsberg will cooperate fully with GM to resolve any problems arising from such change including the provision of the necessary technical assistance. Each party will bear the expense of the change within its respective organization, but Carlsberg undertakes to pay reasonable compensation to GM if the costs GM incurs to modify its plant in order to maintain its committed level of production significantly exceed those Carlsberg Ltd incurs to modify its plant (clause 5.2).

(5.2) Subject to observance of its purchase commitment to Carlsberg Ltd, GM is entitled to brew and sell all its additional requirements of Carlsberg beers (clause 2).

(5.3) GM is free to brew and market lager products other than Carlsberg (clause 12).

(6) A Consultative Committee for Carlsberg beers is set up under the Agreement, consisting of two representatives of Carlsberg Ltd and two representatives of WMTB and having as its main objectives:

— to promote, develop and extend the sales of Carlsberg beers throughout the United Kingdom, taking care to protect the mutual interests of Carlsberg Ltd and WMTB,

— to consult over marketing and advertising plans,

— to monitor the operation of the Agreement and the commercial relationship between the parties,

— to review and agree the sales and supply forecasts of WMTB and Carlsberg Ltd,

— to cooperate in planning economical packaging, transport and delivery of Carlsberg beers (clause 11).

(7) In order that each party may individually plan his production, packaging and distribution arrangements in the most effective manner practicable, WMTB furnishes Carlsberg Ltd, four times a year, with a rolling forecast of its anticipated sales and supply requirements in the following 15 months, broken down by product and by month, and Carlsberg Ltd similarly furnishes WMTB with a forecast of its anticipated sales and requirements for its direct and agency trade. Each forecast is to be supported by a

statement of the rationale of the figures and the Consultative Committee will consider the basis for supply and commitment (clause 4.2).

(7.1) After submission of WMTB's forecasts of requirements, Carlsberg Ltd immediately makes known to GM, through the Consultative Comittee, any areas of exceptional expenditure to Carlsberg Ltd that would arise if the actual requirements varied from the forecast by more than plus or minus 10%. The Consultative Committee, if necessary, reviews the forecast in the light of this information. If such exceptional expenditure is incurred, Carlsberg Ltd is entitled to compensation from GM (clause 4.7).

(8) The parties agree that it is of the utmost importance to maintain the high quality of Carlsberg products and to ensure that there is no difference in quality between the Carlsberg beers brewed by GM and those brewed by Carlsberg Ltd in the United Kingdom and Carlsberg in Denmark (clause 5.5).

(8.1) Carlsberg has the exclusive right to decide on the character, type, design, form and closure of all packaging in order to protect the international image of the products. GM is to be consulted whenever changes are made to the packaging specifications for products GM is entitled to package. Should the cost to GM of implementing such changes significantly exceed those falling to Carlsberg Ltd, Carlsberg will pay GM reasonable compensation (clause 7.2).

(8.2) Carlsberg is to consult with GM before introducing a new Carlsberg product under 1 040° original gravity to the UK market or changing an existing product (clause 9.6).

(8.3) If either party should discover any improvement for the production of any Carlsberg beer to the approved standards of quality for the product concerned, it must promptly disclose the improvement to the other and the improvement may be used within a reasonable period. When specifying the production materials and process requirements of any new product, Carlsberg must take into account the need to make efficient use of the facilities already existing at the GM brewery at which the brewing is proposed (clause 5.6).

(8.4) Should Carlsberg permit other companies to brew in the United Kingdom Carlsberg beers for sale there, it must apply to them the same standards, specifications and technical requirements in respect of brewing, packaging and dispensing as it imposes on GM (clause 13).

(9) Carlsberg Ltd provides advertising support including promotion and point-of-sale material for Carlsberg beers. This support is split between brands and regions broadly in proportion to sales volumes. The allocation of support between brands is decided in consultation with GM (clause 9.1).

(9.1) GM has to pay Carlsberg Ltd, as a contribution to marketing expenses, each year a certain sum per barrel of Carlsberg beers in excess of a specified number of barrels brewed by GM in that year, subject to WMTB's prior agreement (which may not unreasonably be withheld) to the overall UK marketing plan for Carlsberg beers having an original gravity of less than 1 040° (clause 9.3).

(9.2) Carlsberg Ltd consults with WMTB each year about the setting of its advertising and marketing objectives for the next 18 months. After full discussion and agreement of the objectives, Carlsberg Ltd produces a detailed plan, keeping WMTB involved in the process. It presents its comprehensive plans to WMTB before seeking formal approval of the plans from Carlsberg (Denmark) (clause 9.5).

(10) GM is not authorized to use the name Carlsberg except in connection with the sale of Carlsberg beers during the currency of the Agreement (clause 15).

(11) Any information which any of the parties acquires about the other's business and which is not in the public domain is to be treated as strictly confidential (clause 16).

(11.1) GM will maintain all disclosures of know-how by Carlsberg, including all specifications and methods, in confidence. It may continue to use such know-how after the expiry of the Agreement, provided it does not mention the Carlsberg name or trade mark (clause 16.2).

(11.2) The know-how and improvements relating specifically to the production of Carlsberg beers may be used by GM for the production of those beers only in accordance with the provisions of the Agreement. In other contexts and after expiry of the Agreement, this know-how may be used freely by Carlsberg and GM (clause 16.3).

(12) The parties will try to arrive at an amicable settlement of any dispute, question or matter of difference concerning the construction or effect of the Agreement or as to their rights, duties and liabilities (clause 26.1).

(12.1) If no amicable settlement is reached, the dispute is to be referred to a single arbitrator to be agreed upon by the parties or, in the absence of agreement, appointed by the President of the Law Society of England and Wales (clause 26.2).

(13) The Agreement is deemed to have come into effect on 1 October 1979 and will continue in force until 30 September 1991. After that date it will be renewed automatically, subject to not less than two years' prior notice of termination by either party, such notice not to be given before 30 September 1989 (clause 14).

The notified version of the Lager Agreement contained some provisions which the parties have now amended or deleted. These include an obligation to agree each year WMTB's lager production plans, which the Commission regarded as restricting competition and ineligible for exemption and which the parties deleted on 21 December 1983.

D. ECONOMIC BACKGROUND

I. General features of the UK beer market

(a) *Importance of the market*

The beer market in the United Kingdom is of great economic importance. In 1983 it was worth over £ 7 800 000 000 at retail prices (1). Seven large brewing groups, of which Grand Metropolitan is one, hold over 80 % of this market (2).

With a total output in 1982 of 58 149 000 hl (3), which was considerably down on previous years, British breweries supply about 95 % of domestic consumption. In the same year, total UK imports of beers of all types and from all sources came to only 2 732 000 hl (3), i.e. less than 5 % of total consumption. Apart from Ireland, whose beers have always had a special position in the United Kingdom (4), the only EEC countries which have managed to significantly expand their exports of beer to Britain are the Federal Republic of Germany and the Netherlands; Germany's share of total exports to the United Kingdom rose from 3,5 % in 1972 to 27,8 % in 1982 and the Netherlands' from 1,5 to 6,5 % (5). The UK exports of two other major European beer-producing countries, Denmark and Belgium, fell sharply over the same period, largely because of the decision of the two main exporting breweries in the two countries to have their products brewed under licence in the United Kingdom.

(b) *Structure of the UK beer market*

Three factors set the British beer market apart from other markets:

1. a strong tendency towards concentration,
2. the 'tied-house' system, and
3. the paucity of independent wholesalers.

1. The tendency towards concentration

In 1900 there were 1 466 breweries in the United Kingdom (6). By 1950 the number had fallen to 362 and by 1982 there were only 78 (7). This figure masks considerable differences in the size of breweries. As already mentioned, over 80 % of the beer market is held by the seven large national brewing groups, Bass Charrington, Allied Breweries, Scottish & Newcastle, Whitbread, Grand Metropolitan (Watney Mann & Truman), Courage and Guinness. To this list can be added the 1972-built Carlsberg brewery at Northampton, with a lager output in 1982 of 2 258 000 hl, or about 4 % of total beer production.

2. The 'tied-house' system

The second feature of the market is the system of selling beer through networks of outlets, including pubs, clubs and off-licence shops, belonging to or

(1) United Kingdom Central Statistical Office, *Monthly Digest of Statistics*, No 461, May 1984, p. 9.
(2) *Retail Business*, No 263, January 1980, 'Special Report No 1 – Beer', p. 25.
(3) The Brewers' Society, *UK Statistical Handbook 1982*, p. 22.
(4) In 1982 58,6 % of UK beer imports came from Ireland. *Retail Business*, No 312, February 1984, 'Special Report No 2 – Beer', p. 28.
(5) *Retail Business*, No 312, February 1984, 'Special Report No 2 – Beer', p. 28.
(6) Including what is now the Republic of Ireland.
(7) The Brewers' Society, *UK Statistical Handbook 1982*, p. 90.

controlled by the breweries. About two-thirds of sales are made through such outlets. In 1980, out of a total 76 412 full on-licence outlets, 48 958 (64 %) belonged to breweries (1). In addition, the breweries have succeeded in attaching to themselves very many clubs and other premises having only a restricted on-licence, the number of which has grown steadily in recent years. The tied-house system allows the breweries to control closely the distribution and sale of their products right up to the final consumer, to guarantee themselves a market, and to match output better to customers' requirements. Since about 80 % of draught beer, which accounts for over 79 % of total beer sales, is sold in pubs and each of the big brewing groups mentioned above owns or controls several thousand of such pubs as tied houses, it is necessary for a foreign brewer wishing to enter the British market to gain the assistance of a large national brewery.

3. The wholesale trade

There is no significant beer wholesale trade independent of the breweries in the United Kingdom, since the breweries generally distribute and sell their products themselves. Almost all beer is sold, imported or exported by the breweries. The biggest have set up sales subsidiaries. The breweries also nowadays carry out their own bottling and casking, with the result that many bottling wholesalers have gone out of business or have been taken over by the breweries. The share of the bottled beer market still held by independent wholesalers has become minimal. This situation has a bearing on the low percentage of imports of beer into the United Kingdom, since it is independent wholesalers which are traditionally most active in inter-State trade.

(c) *Retailing*

At the retail level, beer is sold on draught and packaged (in bottles and cans). Draught makes up the biggest proportion of sales and its share has been steadily rising from 73,5 % in 1971 to 79,3 % in 1981 (1).

(1) The Brewers' Society, *UK Statistical Handbook 1982*, pp. 21 and 66 to 67.

Over the same period the proportion of beer sold in returnable bottles has steadily declined in favour of beer in cans or non-returnable bottles, whose share of sales has risen from 4 % in 1971 to 11,2 % in 1981 (2).

The last few years have seen an expansion in the take-home beer market. In 1982 this market accounted for about 12 % of all beer sales (3). According to some estimates, 44 % of take-home sales are from supermarkets (48 % for lager), compared with 28 % (30 % for lager) from off-licence shops and 15 % (11 % for lager) from pubs.

II. The lager market

(a) *Characteristics of the product*

This case concerns bottom-fermented beers, which are known in the United Kingdom as 'lager' (from German 'Lager' meaning 'store').

This type of beer is more expensive to produce than others, because at an important stage in the brewing process it must be left to stand for periods ranging from eight days to several weeks, depending on the type of beer and the process used, at a temperature of from 6 to 12 °C. On the other hand it can be stored for longer periods than most beers, which has the advantage that production can be spread over the year, whereas its consumption is subject to marked seasonal variations, with summer peaks sometimes almost 100 % above winter sales levels. With other beers the difference is only about 50 % (4).

(b) *Size of the lager market*

The lager market began a rapid expansion in the 1960s after lager was introduced in pubs. At that time it accounted for under 1 % of total consumption of beer of all types. By 1971 it had reached 9,9 % and in 1981 it held 31 % of the market. This expansion was made at the expense of the traditional British beer types, ale and stout,

(2) The Brewers' Society, *UK Statistical Handbook 1982*, p. 21.
(3) *Retail Business*, No 312, February 1984, 'Special Report No 2 – Beer', p. 41.
(4) *Retail Business*, No 263, January 1980, 'Special Report No 1 – Beer', p. 30.

Shares of the UK lager market (packaged and draught) held by the major breweries in 1982 (1)

Brewery	Main brands of draught lager	%
Bass	Carling Black Label Hemeling Tennent's Tribune	25
Allied	Wrexham Jaguar Skol Löwenbrau Oranjeboom Gold Cross	13,5
Grand Metropolitan (Watney)	Fosters Carlsberg Pilsner Holsten Export	13,5
Scottish & Newcastle	McEwans Kestrel Harp	12
Whitbread	Gold Label Stella Artois Heineken Heldenbrau	12
Courage	Hofmeister Harp Kronenbourg	9
Other		15
TOTAL		100

(1) *Retail Business,* No 313, March 1984, 'Special Report No 2 – Beer', part 2, pp. 15 and 17.

whose market share has declined from 90,1 % in 1971 to 68,9 % in 1981 (1).

Lager is sold on draught and packaged (in cans and bottles). Consumption is steadily expanding in all three forms, but the fastest growth has been in draught, which rose from 7,1 % of the total beer market in 1971 to 23,2 % in 1981 (1).

(c) *Producers and brands of lager*

A large number of brands of lager are sold in the United Kingdom but the market is dominated by eight brands which together account for 95 % of all lager sales. These brands are owned by the big national breweries or brewed and sold by them under licence. The table above shows the market shares of each of the breweries in 1982 and the main brands they produce and/or sell.

(1) The Brewers' Society, *UK Statistical Handbook 1982,* pp. 20 to 21.

II. LEGAL ASSESSMENT

A. ARTICLE 85 (1)

(1) Article 85 (1) of the EEC Treaty prohibits as incompatible with the common market all agreements between undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

(2) The Lager Agreement signed on 2 June 1980 between United Breweries (Carlsberg), its British subsidiary Carlsberg Brewery Limited (Carlsberg

Ltd) and the Grand Metropolitan group (GM), the latter acting chiefly on behalf of its subsidiary Watney Mann & Truman Brewers Ltd (WMTB), is an agreement between undertakings within the meaning of Article 85 (1) of the Treaty. The object of the Agreement, as stated in its preamble, is to continue and reinforce the cooperation between the two brewing groups in developing and promoting the sale of Carlsberg products in the United Kingdom, which dates from the formation of Carlsberg Ltd on 1 May 1970 as a joint subsidiary of Carlsberg and Watney Mann and was continued under agreements made after the joint venture was ended. This cooperation between the biggest Danish brewery, Carlsberg, and two of the biggest British breweries Watney Mann and Truman and their subsidiaries, which all belong to the GM group, involves close consultation between them regarding both the production and the distribution and marketing of Carlsberg products in the United Kingdom. The community of interest which the cooperation engenders between the parties and the reciprocal influence it causes them to exert on one another significantly affect their market behaviour.

(3) The following provisions of the Agreement have the object and effect of restricting competition within the common market, and this effect is particularly significant since the industry concerned is already highly concentrated.

(3.1) The obligation upon GM to purchase each year from Carlsberg Ltd throughout the currency of the Agreement, that is until 1991, a very large volume of lager beers, which at present makes up over half of GM's annual lager purchases, is restrictive of competition because it prevents GM from producing this volume itself or purchasing it from other producers, possibly on more favourable terms. The restriction of competition is backed up by the right of Carlsberg Ltd to claim compensation from GM if GM fails, except for reasons beyond its control, to take up the agreed volume. These provisions significantly affect the competitive position of each of the undertakings both in relation to the other party and in relation to their competitors on the UK lager market.

(3.2) The obligation upon Carlsberg Ltd to supply GM throughout the currency of the Agreement with all its requirements of Carlsberg beers up to the level forecast each year by GM plus 10% is also restrictive of competition because it deprives Carlsberg Ltd of control over more than half of its present output which it would otherwise be able to sell to other breweries or on the free market through its agencies. Since Carlsberg has not yet entered into a similar agreement with any other brewery in the United Kingdom and has granted a manufacturing and sales licence for its beers only to GM, GM has *de facto* exclusivity for the sale of Carlsberg beers in the United Kingdom. The clause whereby GM would be released from its purchase commitment should Carlsberg permit another company to brew Carlsberg beers in the United Kingdom in excess of the company's sales to its tied outlets, so that some of the beer brewed by the company would be available for sale on the free market, also operates in favour of exclusivity for GM, since it tends to discourage Carlsberg from licensing other companies for fear of losing the guaranteed market for over half of Carlsberg Ltd's output.

(3.3) The obligations upon each party to furnish the other four times a year with a rolling forecast of its sales and supply requirements and to consult with one another about such sales forecasts are restrictions of competition which are linked to the purchase and supply commitments. The restrictive effect of the obligations is reinforced by Carlsberg Ltd's right to compensation from GM should it incur exceptional expenditure because of GM's failure to keep to the announced forecasts, which obliges GM to keep its sales strictly to the forecast levels.

(4) The other clauses of the Lager Agreement do not fall within Article 85 (1) because they do not have as their object or effect a significant restriction of competition within the common market. This applies, for example, to Carlsberg's obligation to apply to any other licensees the same standards, specifications and technical requirements in respect of brewing, packaging and outlets as it imposes on GM, which is necessary in order to guarantee that Carlsberg products are of uniform quality whoever produces them, uniform quality being inextricably linked to the international reputation of the trade mark, which is also licensed to GM. It is justifiable for the licensee to attach the same importance to this as the licensor, since sales of Carlsberg products make up a substantial proportion of its subsidiary WMTB's turnover.

(5) Although the Lager Agreement only concerns the production, distribution and sale of Carlsberg products in the United Kingdom, it is liable to have a significant effect on trade between Member States.

(5.1) First, the commitment of GM to purchase a very large quantity of Carlsberg beers from Carlsberg Ltd each year prevents other EEC brewers selling GM that quantity of lager beer. Secondly, with over half of Carlsberg Ltd's output reserved for one buyer in the United Kingdom, GM, this amount is not available for export, for example to other European markets like Belgium, Luxembourg and France where the products are popular; Carlsberg Ltd already occasionally exports lager to certain other Member States. That the Agreement can have a tangible effect on inter-State trade is shown by the fact that some other large Continental brewers export large quantities of lager to the United Kingdom each year and that Carlsberg used to export large amounts of beer to the United Kingdom before the Northampton brewery was built and still exports small amounts of special beers which it would be uneconomic for it to produce locally. The obligations on the parties to inform one another of their anticipated sales and supply requirements and to consult with one another on their sales forecasts reinforce and complement the effect of the purchase and supply commitments on inter-State trade. The trade in lager to and from the United Kingdom is thereby significantly altered from what it would otherwise be.

(6) The Agreement therefore falls within the scope of Article 85 (1).

B. ARTICLE 85 (3)

(7) Article 85 (3) of the EEC Treaty provides that Article 85 (1) may be declared inapplicable in the case of any agreement between undertakings which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

(8) The Lager Agreement and the restrictions of competition contained in it must be seen in the light of the peculiar structure of the British beer market and the economic and commercial position of Carlsberg on that market. The Cooperation Agreement has enabled Carlsberg to establish itself more quickly and over a wider area thanks to GM's large network of tied outlets. Without this cooperation Carlsberg would as yet be unable to keep its Northampton brewery fully occupied. In view of the economic advantages of the arrangements, which will be shown below, the restrictions of competition resulting from the Agreement can be tolerated until 30 September 1991, since this period should be sufficient for Carlsberg to build up its own sales network and progressively become independent of any other large brewery for distributing its output.

(9) The purchase, supply and forecasting obligations contribute to improving production and distribution. The purchase and supply commitments allow the parties to make the best use of production capacity and to rationalize the distribution of a product which has to be consumed within a relatively short period and the consumption of which is subject to marked seasonal variations. The obligation to collate their sales forecasts enables the parties to plan future output and sales of their products more precisely and further ahead and to cut production, storage and marketing costs. By allowing a better adjustment of production to sales, the obligation to collate forecasts also helps to maintain optimum utilization of the parties' respective production capacity and to pay off the considerable investment each of them has committed to Carlsberg beer in the United Kingdom more quickly.

(10) Consumers are allowed a fair share of the benefits resulting from the abovementioned improvements in production and distribution since, by making

possible the brewing of Carlsberg beers in the United Kingdom, the Agreement ensures that supplies of the beers there are more plentiful, fresher and also cheaper because of the saving of the considerable cost of transporting a heavy commodity like beer over large distances.

(11) The Agreement does not entail any restrictions which are not indispensable. If the restrictions had not been agreed, the economic advantages listed above would not have been obtained to the same extent in view of the peculiar structure of the British beer market and the economic and commercial position of Carlsberg Ltd. These obligations do not go beyond what is strictly necessary, since the parties have agreed to delete the restrictions which were not indispensable. They are also free to set their own prices and conditions of sale.

(12) The Agreement does not afford the undertakings the opportunity of eliminating competition for a substantial part of the products in question. The volume of Carlsberg lager which GM is committed to purchase from Carlsberg each year represents at present about one-third of GM's total lager sales, which include competing lager brands such as Fosters, Holsten and Top Brass as well as the lager supplied by Carlsberg Ltd and that which it brews itself under licence from Carlsberg. There are a large number of competing brands of lager on the British market. Other large breweries or brewing groups operating on the market hold market shares in the lager sector equal to or larger than Carlsberg's, as the above table shows. Carlsberg's share of the UK beer market overall is only about 4 %. The Agreement does not, therefore, have the effect of eliminating competition for a substantial part of the products in question.

(13) All the conditions laid down in Article 85 (3) are consequently fulfilled.

C. ARTICLES 6 AND 8 OF REGULATION No 17

(14) Article 6 of Regulation No 17 provides that whenever the Commission takes a decision pursuant to Article 85 (3) of the Treaty it must specify the date from which the decision shall take effect. Such date may not be earlier than the date of notification.

(15) Article 8 of Regulation No 17 provides that decisions in application of Article 85 (3) of the Treaty must be issued for a specified period and that conditions and obligations may be attached.

(16) The Agreement in question was notified to the Commission on 12 June 1980, came into effect on 1 October 1979 and is due to expire on 30 September 1991, unless renewed automatically.

(17) The period until 30 September 1991 should be long enough for Carlsberg Ltd to build up its own distribution network so that it is no longer dependent on GM for the marketing of its output in the United Kingdom. It is therefore appropriate to grant the exemption for the period from 21 December 1983, when the parties decided to end the obligation to agree Watney Mann & Truman's lager brewing plans, which the Commission considered to be a restriction which was not indispensable within the meaning of Article 85 (3), until 30 September 1991.

(18) In order that the Commission may satisfy itself that the conditions of Article 85 (3) continue to be fulfilled during the period of the exemption, the parties should be required to send the Commission, without delay, copies of the minutes of meetings of the Consultative Committee set up under clause 11 of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3) of the EEC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable, for the period from 21 December 1983 until 30 September 1991, to the Cooperation Agreement called the 'Lager Agreement' signed on 2 June 1980 between De forenede Bryggerier A/S (The United Breweries Limited) and Grand Metropolitan Ltd.

Article 2

The undertakings to which this Decision is addressed shall send the Commission, without delay, copies of the minutes of meetings of the Consultative Committee set up under clause 11 of the Agreement.

Article 3

This Decision is addressed to:

— De forenede Bryggerier A/S (The United Breweries Limited),
Vesterfælledvej 100,
DK-1799 Copenhagen V;

— Carlsberg Brewery Limited,
29 Bedford Row,
UK-London WC1;

— Grand Metropolitan plc,
11/12 Hanover Square,
UK-London W1.

Done at Brussels, 12 July 1984.

For the Commission

Frans ANDRIESSEN

Member of the Commission