



## PRESS RELEASE No 80/25

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Judgment of the General Court in Case T-289/24 | Brasserie Nationale and Munhowen v Commission

### **Merger control: the General Court upholds the Commission's decision to examine, at the request of Luxembourg, the acquisition of Boissons Heintz by Brasserie Nationale (Munhowen)**

*Since information limited to the mere existence of a concentration does not constitute 'making known' within the meaning of EU law, Brasserie Nationale and Munhowen have not shown that the request for referral had been submitted out of time*

Brasserie Nationale, a Luxembourg company producing beer and mineral water, owns Munhowen, its 100% subsidiary, which specialises in the wholesale distribution of beverages in Luxembourg and in the border regions of France and Belgium.

On 22 December 2023 and 10 January 2024, Brasserie Nationale informed the Competition Authority of the Grand Duchy of Luxembourg ('LCA') of its intention to acquire sole control of Boissons Heintz – a Luxembourg company engaged in the wholesale distribution of beverages – through Munhowen, which intended to acquire all the shares in that company.

Since the relevant turnovers were not met, that concentration did not have a European dimension and therefore did not have to be notified to the European Commission. Moreover, in the absence of a merger control system in Luxembourg, there was no obligation to notify on that basis in that Member State. Nor was that concentration notified in another Member State of the European Union or in any of the States party to the Agreement on the European Economic Area (EEA), since it did not meet the relevant national thresholds.

On 7 February 2024, the LCA requested the Commission, pursuant to Article 22 of the Merger Regulation, <sup>1</sup> to examine the concentration at issue. <sup>2</sup> On 14 March 2024, the Commission granted that referral request. It considered that the concentration could affect trade between Member States and threatened to significantly affect competition within the territory of Luxembourg. It would, it was argued, deprive beer and drinks producers established in other Member States, not having a distribution network through the sales channel for direct distribution, of access to the Luxembourg market.

Brasserie Nationale and Munhowen challenged that decision before the General Court of the European Union. They seek the annulment of that decision in its entirety, in particular because they consider that the referral request was submitted out of time. Indeed, it was, allegedly, submitted without complying with the deadline of 15 working days from the date on which the concentration was 'made known' <sup>3</sup> to the Member State concerned, as provided for in EU law.

By today's judgment, the General Court **dismisses the action brought by Brasserie Nationale and Munhowen**. <sup>4</sup> It finds that the 'making known' of the concentration must consist of an **active transmission** of relevant and sufficient information to the competent authority of the Member State concerned. That transmission must **enable those authorities to assess** whether the concentration in question, without having a European dimension, affects

trade between Member States and threatens to significantly affect competition within the territory of the Member State making the request.

The General Court adds that mere information relating simply to the existence of the concentration **does not satisfy the conditions relating to** making that concentration known. It follows that the period of 15 working days cannot begin to run until such complete information has been transmitted to the Member State concerned.

In addition, the General Court states that the Commission was right to establish the date of 17 January 2024 as being the point from which that period started to run. Indeed, Brasserie Nationale and Munhowen have not shown that, before 17 January 2024, they had provided sufficient information to enable the ACL to assess the conditions of the proposed concentration. In that regard, the General Court adds that the national authorities could not be required to take positive steps once informed of the existence of the concentration. Nor are they required actively to seek information on the concentration at issue or on the undertakings concerned.

Furthermore, the General Court states that the **Commission, which** has a **margin of discretion** in that regard, **was fully entitled to consider it appropriate to grant the referral request**. It recalls that Article 22 of the Merger Regulation enables Member States not having national merger control rules to request the Commission to scrutinise concentrations that may have adverse effects in their territory, where those concentrations also affect trade between Member States.

Since Luxembourg does not have a merger control system, the concentration at issue and its effects would not have been caught by any other merger control system if the referral request had not been accepted.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup> [Council Regulation \(EC\) No 139/2004](#) of 20 January 2004 on the control of concentrations between undertakings ('the Merger Regulation').

<sup>2</sup> Regulation No 139/2004 enables Member States not having national merger control rules to request the Commission to scrutinise concentrations that may have adverse effects in their territory, where those concentrations also affect trade between Member States. It should be noted in that regard that Luxembourg is the only Member State not having a merger control system at national level.

<sup>3</sup> In the absence of an obligation to notify that concentration in Luxembourg, the point from which the period of 15 working days for submitting a referral request starts to run is, in the present case, the date on which the concentration at issue was 'made known' to the Member State concerned.

<sup>4</sup> In so doing, the General Court refers in particular to the judgment of 3 September 2024, *Illumina and Grail v Commission*, [C-611/22 P](#) and [C-625/22 P](#) (see also press release [No 127/24](#)).