

Mexico restricts brewers' exclusive contracts

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Mexico's Federal Competition Commission has imposed conditions on the country's two major breweries' exclusive contracts with retailers to open the country's beer market to more producers.

The decision establishes a penalty equal to 8 per cent of annual Mexican turnover for failure to meet the CFC's conditions.

Grupo Modelo, recently purchased by Anheuser Busch InBev, and Heineken-owned Cuauhtémoc Moctezuma control more than 95 per cent of the Mexican beer market, including both open-container sales by restaurants, bars and taverns, and closed-container sales by grocery and convenience stores.

Thursday's decision closes an investigation that the CFC began in 2010 at the request of SABMiller, which alleged monopolistic practices by its competitors.

Mexico's competition law says exclusivity contracts may constitute anti-competitive conduct when entered into by companies with market power if they impede competitors' access to the market and are not justified by the benefit to consumers.

Modelo and Cuauhtémoc Moctezuma negotiated a settlement to the investigation, which limits the breweries' exclusivity contracts with most retailers to a maximum of 25 per cent of all its sales terminals; this will be reduced to 20 per cent within five years.

The CFC concluded that efficiencies could justify some exclusive contracts, such as when exclusivity is a condition for the brewery's financing improvement or expansion of the retailer's premises.

The breweries had argued that many of the smallest and family-owned retailers lacked the funds for adequate refrigeration and upkeep to attract consumers. The exclusive agreements gave breweries an incentive to invest in these small retailers without having to worry that a competing producer would free-ride on the improvements.

"The presence or existence of these retailers, many of which without the breweries' help would most likely not survive, allows more competition between stores, reducing prices and offering better products or services for end-consumers, which ultimately is the purpose of antitrust law," says Fernando Carreño of Von Wobeser y Sierra SC and counsel to AB InBev.

The CFC's decision was made on a 4-1 vote, with commissioner Miguel Flores Bernés dissenting.

"Sales-exclusivity contracts with corner stores, bars and restaurants reduce consumers' choices and, in my opinion, strengthen the market position of Modelo and Moctezuma in Mexican regional markets," Flores says in his dissenting opinion. "The reality is that Mexicans can only consume the beer that Modelo or Moctezuma distribute."

Flores expresses scepticism about the "supposed efficiencies" of exclusivity contracts, noting that when the CFC prohibited such contracts between a soft drink company and convenience stores, "there was no recorded loss of benefits to corner stores".

He also alleges that breweries have a practice of obtaining alcohol licences from local governments and handing them off to retailers. "This practice should also be prohibited since it affects small businesses' choices to sell beers from other competitors," he says.

Flores says the 25-20 per cent limitation on contracts does not repair the damage to the market, as the two brewers "will be able to strategically pick and choose where to apply these exclusivity contracts and therefore to select the most successful outlet retailers or those that in a territory will make more difficult the entry of competitors".

Carreño concedes the settlement does not specify a mechanism for determining which retailers retain exclusivity, and that breweries will decide based on factors such as sales, market and product presence. However, he says that retailers can choose to remain exclusive with one brewery, since the settlement grants the retailers the right to purchase beers from more than one producer, but does not imply that retailers are obliged to do so.

Carreño adds that Flores is "a commissioner that usually dissents," and that the difficulties smaller brewers have penetrating the market are not the fault of the two majors.

"Beers manufactured by micro-brewers have always had distribution, sale and marketing problems, based on the limited amount of infrastructure and personnel they have," Carreño says. "Most restaurants that can afford to purchase craft beers have strict compliance and contract obligations," which he says many craft brewers cannot meet.

Carreño also disputes Flores's claim regarding brewers' obtaining alcohol licences, saying that the granting of licences is not subject to exclusivity with the brewer that helped the retailer obtain it.

"On the contrary, since licences can be difficult to obtain, the granting of these licences allows points of sale to have a wider [array] of products to offer and sell, which increases the options for purchasing beer for the end consumers," he says.

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Comments

There are currently no comments.
