

EN

Case No COMP/M.4281
– CVC / Matas

Only the Danish text is authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 4(4)
Date: 09/11/2006



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09.11.2006
SG – Greffe(2006)D/206728

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE ARTICLE
4(4) DECISION

To the notifying parties

To the Danish Competition Authorities

Dear Sir or Madam,

**Subject: Case No COMP/M.4281 – CVC/Matas
Reasoned submission pursuant to article 4(4) of Regulation No 139/2004 for
referral of the case to Denmark.**

Date of filing: 03/10/2006

Legal deadline for response of Member States: 30/10/2006

Legal deadline for the Commission decision under Art. 4 (4): 09/11/2006

I. INTRODUCTION

1. On 03/10/2006, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 (“EC Merger Regulation”) for referral of the above mentioned case in its entirety to Denmark.
2. According to Article 4(4) of the EC Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to a Member State if the concentration may significantly affect competition in a market within this Member State which presents all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 03/10/2006.

4. By letter of 09/10/2006, the Danish Competition Authority informed the Commission that Denmark agrees with the proposed referral.

II. THE PARTIES AND THE PROPOSED TRANSACTION

5. CVC Capital Partners Group S.a.r.l. ("CVC", Luxembourg) is an independent private equity firm specialising in large-scale leveraged buy-outs. The principal part of its business is providing investment advice to, and/or management of investment funds ("CVC Funds") that make investments in other companies ("CVC Portfolio Companies") in various industries including but not limited to chemicals, automotive, utilities, manufacturing, retailing and distribution in Europe and the Asia-Pacific Region.
6. Matas A/S and the Matas shops owned by the current shareholders of Matas A/S (collectively the "Matas Chain", Denmark) is a voluntary chain of retail shops operating within the health and personal care sector. The products sold include own label products as well as products manufactured by others. The shops in the Matas Chain are operated under the Matas brand and are subject to a concept administered through Matas A/S. Matas A/S is currently owned by 180 individuals. The individual Matas A/S shareholders own a total of 292 Matas shops in Denmark and 3 in Sweden and the owners of Matas A/S are therefore also the owners of the individual shops in the Matas Chain.
7. CVC Fund IV which is one of the above mentioned CVC Funds intends to indirectly acquire sole control of the Matas Chain. To this end CVC Fund IV will acquire no less than 51 % of the share capital and voting rights in Matas A/S as well as a number of Matas shops representing no less than 51 per cent of the total turnover of the Matas chain.¹
8. The proposed acquisition of sole control of Matas A/S concerns a concentration within the meaning of Article 3(1)(b) of the EC Merger Control Regulation.

III. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (EUR [<50] billion for CVC in 2005, EUR [>250] million for the Matas Chain in 2004/2005). Both CVC and the Matas Chain have a Community-wide turnover in excess of EUR 250 million (CVC EUR [...] billion in 2005, the whole of Matas Chain EUR [...] million in 2004/2005; according to the notifying party (Email of 31 October 2006) already at the time of this decision the transaction has reached "a level of acceptance of [>80]% of the total turnover of the Matas shops" which, according to the same information, corresponds to EUR [>250] million of turnover). CVC does not achieve more than two-thirds of its aggregated Community-wide turnover within one and the same Member State. Therefore, the concentration has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

IV. ASSESSMENT

10. Although, according to the Reasoned Submission, there are no horizontal or vertical overlaps between the parties and therefore no affected markets, the transaction might have an appreciable impact on competition through the intended change from current independent ownership by a large number of shop owners to a centralized group.

¹ On 31/10/2006 the level of acceptance was more than 84 %.

A. Relevant product markets

11. Matas Chain is active in the retail of the following product groups: (i) personal care products (“beauty”, which might be further distinguished in high-end and low-end products), including cosmetics, lotions, deodorants and perfumes, nail and hair products, (ii) health and well-being products (“vital”), including diet supplements, vitamins and minerals, natural/herbal medicine, over-the-counter drugs and (iii) a wide range of heterogeneous products (“material”) including baby care, sports care, foot care (chirobody), and chemical products, including cleaning products, stain removers, etc. The parties consider that the retail of these product groups might each constitute a separate product market but leave the exact market definition open. The Commission has previously found that specialised retail shops for certain groups of daily consumer goods could be regarded as a specialised distribution channel which might for producers of certain products not be fully substitutable by other distribution channels².
12. Matas Chain is also active in the procurement of the three product groups sold in the Matas shops. The Commission has in previous decisions considered that the market for procurement of daily consumer goods is to be split into a number of product groups³, including groups for (i) body care products and cosmetics (ii) detergents, polishes, cleaning products and (iii) other drugstore products (including apart from the above medicinal products available over the counter, health food, personal hygiene products etc.).

B. Relevant geographic markets

13. The parties submit that the geographic scope of the retail market(s) is national as retail chains like Matas operate on a national level and determine competition parameters on a national scale. In previous Commission Decisions the geographic market for the retail sale of daily consumer goods has been delineated according to demand side arguments by the boundaries of a territory where the outlets can be reached easily by consumers (radius of 20 to 30 minutes driving time). This territory may be larger if different local areas are connected in such a way that they result in overlapping circles⁴. The relevant geographic market therefore appears to be national at most if not local or regional in some areas. With a very limited exception of three shops in Sweden Matas is active only in Denmark.
14. As to the market for the procurement of different product groups the parties submitted in the Reasoned Submission that Matas Chain purchases its products from large international suppliers and that the market should therefore be considered as broader than national. The Commission has found in earlier Decisions that the markets for the procurement of daily consumer goods are national in general but can be smaller or larger for certain products groups due to their specific characteristics⁵. As regards the Matas’ portfolio the notifying party has indeed subsequently indicated that only [10-20] % of Matas’ beauty products are purchased directly from international suppliers abroad

² Case M. 1221 Rewe / Meini; Case M. 1684 Carrefour /Promodès

³ Case M. 1221 Rewe / Meini; Case M. 1684 Carrefour /Promodès

⁴ Case M. 1221 Rewe / Meini; Case M. 1684 Carrefour /Promodès; Case M 3905- Tesco/Carrefour; Case M. 1534 PPR / Gucci

⁵ Case M. 1684 Carrefour /Promodès

whereas [>80] % are purchased from Danish subsidiaries/sales offices or wholesalers. As regards Matas' purchase of vital and material products the notifying party has informed the Commission that the vast majority of these products are purchased in Denmark from Danish producers or wholesalers.

15. It thus appears that irrespective of the geographic definition the main (potential) impact of the concentration is likely to be in markets with a national (Denmark) or narrower than national scope whereas the potential impact on wider markets is not likely to be substantial (cf. points 17-20 of the Commission Notice on Case Referral⁶ ("Referral Notice")).

C. Effect on competition

16. On a market for the retail of personal care products Matas Chain has a market share of [60-70] % in the segment for high-end products and [20-30] % in the segment for low-end products. Main competitor for high-end products is Magasin with [20-30] %, other competitors have only very small market shares (Beauty Zone [1-10] %, pharmacies [1-10] %, other perfumeries [1-10] %, others [1-10] %).⁷ In the low-end segment main competitors are Fotex and Bilka ([15-25] %), Super Brugsen and Kvickly ([10-20] %), discount and other groceries trade ([20-30] %). Pharmacies have an aggregated market share of [5-15] %, perfumeries of [0-10] %, others of [0-10] %.⁸
17. On the market for retail of health and well-being products Matas Chain with a market share of approximately [20-30] % is competing with Helsam and other health food stores ([15-25] %), pharmacies ([20-30] %), Fotex and Bilka ([5-15] %), Super Brugsen and Kvickly ([0-10] %) and others ([5-15] %). In the retail sale of material products Matas' market position is limited to [0-10] % while this type of product is sold mainly by supermarkets ([80-90] %).
18. If a narrower definition of the geographic market is considered (regional/local), the abovementioned market shares for the distinct product markets would be higher in certain areas of Denmark.
19. According to the parties these market shares on the retail level are reflected on the procurement markets for the products concerned.
20. The parties consider that the concentration will enhance competition on the relevant markets since the shift from a voluntary chain to a capital chain will strengthen the Matas Chain's possibilities of making a more consistent and effective marketing of the chain and its products.
21. The Danish competition authority has expressed concerns that the interbrand and intrabrand competition will be affected by the transaction as the Matas shops will no longer compete with each other and competition on the relevant product markets is in some regions of Denmark very limited.

⁶ Commission Notice on Case Referral in respect of Concentrations of 5 March 2005, OJ C 56/2.

⁷ Not included are tax free sales of high-end cosmetics and other channels.

⁸ These market shares are based on Nielsen figures. Not taken into account are sales by pharmacies etc. which are not mirrored by Nielsen.

22. The Commission has previously considered that a centrally managed chain has important advantages in comparison with independent shops who may buy centrally but who decide individually (e.g. quicker reactions like outlisting of products) and that purchasing markets and retail markets are linked with each other.⁹ A competitive impact on the procurement level might therefore lead to effects on retail markets and vice versa.

V. REFERRAL

23. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the EC Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission Referral Notice (paragraph 17) indicates that, in seeking a referral under Article 4(4), *“the requesting parties are in essence required to demonstrate that the transaction is liable to have a potential impact on competition on a distinct market in a Member State, which may prove to be significant, thus deserving close scrutiny”*, and that *“such indications may be no more than preliminary in nature [...] While the parties are not required to demonstrate that the effect on competition is likely to be an adverse one, they should point to indicators which are generally suggestive of the existence of some competitive effects stemming from the transaction”*. By pointing to the Danish competition authority's concern regarding potential effects on interbrand and intrabrand competition the parties have provided such indications.
24. The Commission considers that, on the basis of the information submitted in the Reasoned Submission and subsequent submissions, the concentration is liable to have a significant impact on competition on distinct markets in Denmark with a national or narrower than national scope whereas the potential impact on wider markets is not likely to be substantial (cf. points 17-20 of the Referral Notice). Referral of the case as a whole thus seems appropriate. Considering its previous experience in relation to the creation of the Matas Chain as well as the Danish markets for the retail of daily consumer goods by general and specialised retail outlets, the competent authority of Denmark appears to be best placed to investigate this transaction.

VI. CONCLUSION

25. In light of the above elements, on the basis of the guiding principles of the Commission Notice on case referral¹⁰ and with reference to the agreement of Denmark with the proposed referral, the Commission has decided to refer the transaction in its entirety to the competent authorities of Denmark. This decision is adopted in application of Article 4(4) of the EC Merger Regulation.

For the Commission,
signed
Philip LOWE
Director General

⁹ Case M. 1221 Rewe / Meinel

¹⁰ Commission Notice on Case Referral in respect of Concentrations, OJ C56/2, of 5 March 2005.