

***Case No COMP/M.2843 -  
AMCOR /  
SCHMALBACH-  
LUBECA***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

---

Article 6(1)(b) NON-OPPOSITION  
Date: 28/06/2002

*Also available in the CELEX database  
Document No 302M2843*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.06.2002

SG (2002) D/230435

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

NOT TO BE PUBLISHED

ARTICLE 6(1)(b) DECISION  
MERGER PROCEDURE

To the notifying parties

Dear Sir/Madam,

**Subject:** Case No **COMP/M.2843 – AMCOR/SCHMALBACH-LUBECA**  
Notification of 29.05.2002 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>

1. On 29 May 2002, the Commission received a notification of a proposed concentration, whereby the Australian company Amcor Limited (“Amcor”) intends to acquire within the meaning of Article 3(1)(b) of the Council Regulation (EEC) No 4064/89 (“the Merger Regulation”) control of the PET container and closure businesses of the German company Schmalbach-Lubeca AG (further “Schmalbach”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

#### **I. THE PARTIES**

3. Amcor, an Australian based, publicly listed company, is a global packaging company, whose products include corrugated boxes, flexible packaging, closures, aluminium cans, PET containers and folding cartons. Amcor’s operations extend to Australasia, Asia, Europe and the Americas. Amcor’s principle business in Europe is held through

---

<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

Amcor Flexibles Europe<sup>2</sup>, which has a total of 40 plants located in 10 countries. Amcor also provides folding cartons packaging primarily for the tobacco industry in Europe.

4. Schmalbach-Lubeca AG is a German company active in the production and supply of PET packaging products, metal and plastic closures for glass and plastic packaging, including closure equipment, and beverage cans.

## **II. THE OPERATION**

5. The notified transaction concerns the proposed acquisition by Amcor of the world-wide PET container and closure businesses of Schmalbach-Lubeca AG. The can business activities of Schmalbach-Lubeca AG are excluded from the scope of the transaction. Amcor and Schmalbach-Lubeca AG entered into an sales agreement on 7 May 2002.

## **III. CONCENTRATION**

6. The acquisition by Amcor of control of the world-wide PET container and closure businesses of Schmalbach-Lubeca AG constitutes a concentration within Article 3(1)(b) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Amcor EUR 4,930 million and Schmalbach EUR 1,975 million in 2001)<sup>3</sup>. Each of Amcor and Schmalbach have a Community-wide turnover in excess of EUR 250 million (Amcor EUR [...] million and Schmalbach EUR [...] million in 2001), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **V. RELEVANT MARKETS**

### **A. The relevant product markets**

8. In the EEA, Amcor is active in flexible packaging and folding carton packaging and Schmalbach in PET packaging and closures.
9. The notifying party thus identifies four product markets to be relevant for the transaction but, in the absence of horizontal overlaps or material vertical relationships in the EEA, submits that there are no affected markets.

---

<sup>2</sup> See Commission decision of 11 June 2001 in case COMP/M.2441 – Amcor/Danisco/Ahlstrom concerning a joint venture between the flexible packaging of Amcor Europe, Danisco S/A and A. Ahlstrom Corporation.

<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

10. The markets in question are (i) the manufacture and supply of PET packaging (bottles and preforms); (ii) the manufacture and supply flexible packaging; (iii) the manufacture and supply of folding carton packaging; and (iv) the manufacture and supply of metal and plastic closures, including closure equipment. Each of these markets will be discussed in brief below.

#### *PET packaging and preforms*

11. The notifying party submits that PET is a malleable, gas permeable plastic resin material familiar to consumers as transparent bottles used to contain drinks and liquid foods, but also capable of use for non-food purposes, such as for containing shampoos and cosmetic creams. The notifying party considers PET packaging market to be distinct product market from other types of packaging.
12. PET preforms are pre-production tubes made from PET resin that are used in a stretch-blow-moulding machine to produce the final PET bottle. There are two kinds of preforms: standard resin performs and preforms with enhanced barrier properties. Preforms are usually produced by converters and are sold to beverage companies for the production of bottles or are used by converters for the production of bottles. The Commission defined in case *COMP/M.2416 – Tetra Laval/Sidel*, a separate market for preforms.
13. For the purposes of the present transaction, the precise definition of the relevant product market can be left open since in all alternative market definitions considered, effective competition would not be significantly impeded in the market for PET packaging or preforms in the EEA or in a substantial part of it.

#### *Flexible packaging*

14. Flexible packaging involves the manufacture, supply and conversion of plastic and cellulose films, aluminium foils and papers which are used separately or in combination for primary retail food packaging and labelling, and certain on-foods sectors, such as medical and pharmaceutical packaging.
15. According to the notifying party, flexible packaging excludes shrink and stretch films used for secondary packaging, pallet wrap, carrier bags, supermarket self-service and counter bags, silage bags, refuse sacks, and industrial heavy duty sacks. It also excludes PVC, and other cling films and aluminium foil sold to consumers. The notifying party has excluded these items from the definition of flexible packaging as according to Amcor these items constitute separate markets in which it has some relatively minor activities relating to paper carrier bags (Unibag), combination of carton and flexible laminate used for plastic tubes (Tablebag) and printing method for bottles and tubes (Transdeco).
16. Amcor considers that flexible packaging as a whole is the relevant product market and that it is not meaningful to subdivide the flexible packaging market into narrower sub markets as most demand for flexible packaging is customized so that each customer has very specific requirements for each product based on a number of considerations: costs, functionality, shelf life, machinability and “look and feel”. A combination of these factors will set the parameters within which raw materials and conversion processes used for the specific packaging product supplied will be chosen. As a result, similar products may often be packaged very differently, whilst different products may be packaged with similar packaging. On the supply-side, there is a high degree of

substitutability in the sense that manufacturers of flexible packaging displaying one set of characteristics can readily produce flexible packaging displaying a different set of characteristics.

17. In *COMP/M.2441 - Amcor/Danisco/Ahlstrom*, the Commission noted from the market investigation that possible demand segmentation was envisageable, by distinguishing the customers and sales of flexible packaging according to some end-use industries (e.g. food, medical, pharmaceuticals, household, other non-food, and within food: dairy, beverages, confectionery, fresh, dried, frozen, and pet food). The notifying party does not share this view.
18. The notifying party further submits that there is minimal end use overlap between Amcor's and Schmalbach's PET and flexible packaging activities. This overlap is confined to the following products: shampoo, wine and pasta sauces. In this context it should be noted that PET packaging and flexible packaging have a limited presence in the packaging of shampoo (principally other types of plastic), wine (mostly glass) and pasta sauces (majority in glass, carton, can) and neither packaging material constitutes the main packaging material for these products but is confined to more specific uses.
19. For the purposes of this case the precise definition of the relevant product market can be left open, however, since, in all alternative market definition considered, effective competition would not be significantly impeded in the EEA or in a substantial part of it.

#### *Folding carton packaging*

20. The notifying party submits that folding cartons are multi-layered paperboard cartons which are printed/coated and cut into carton blanks. The carton blanks also incorporate creases, which enable the carton to be formed for packaging the customer's product. Folding carton packaging is sold to producers of food and non-food consumer products, including non-liquid and liquid foods, cigarettes, cosmetics and pharmaceuticals, as well as to producers of food products, including non-liquid and liquid foods. All folding carton packaging used for liquid foods is secondary packaging, for example, the outer presentation box for a bottle of alcoholic beverage.
21. The notifying party considers the relevant market to comprise the market for the production and supply of folding carton packaging without the need to sub-divide the market into narrower markets.
22. In *COMP/M.1792 - Ahlstrom/Capman/Folding Carton Partners*, the Commission considered the market for converting folding carton packaging but did not find it necessary to define exactly the scope of the relevant product market. For the purposes of this case it is not necessary to define the relevant product market because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

#### *Closures*

23. Closures are "bottle-caps" used for sealing the contents of the bottle. Closures are either made from metal with a plastic or cork liner, or alternatively entirely from plastic. The notifying party submits that metal closures are used primarily for glass containers in the food and beverage industry. Plastic closures are used primarily for metal/composite cans, cosmetics, cleaning agents, and small containers for food and

delicatessen purposes. The notifying party considers the relevant product market as the market for manufacture and supply of closures for food and beverage uses.

24. In case *IV/M.603 - Crown Cork & Seal/Carnaud Metalbox* the Commission concluded that there was a separate market for metal crowns closures and left open whether plastic and aluminium closures belong to one and the same market or not. The notifying party points out that for vacuum seal food in plastic and glass containers, for which Schmalbach closures are primarily used, both metal and plastic closures are currently used. This is due to packaging industry inventing vacuum-suitable plastic containers and closures during the mid 90's.
25. For the purposes of this case the exact definition of the relevant product market can be left open, however, since, in all alternative market definition considered, effective competition would not be significantly impeded in the EEA or in a substantial part of it.

## **B. Relevant geographic markets**

### *PET packaging and preforms*

26. The notifying party considers the geographic market for PET containers and preforms to be EEA wide in scope. The Commission held in case *COMP/M.2416 – Tetra Laval/Sidel* that the market for PET packaging equipment and preforms was the EEA. The Commission's investigation broadly supported this view.

### *Flexible packaging*

27. Due to a substantial degree of import and exports between different European countries and increasing level of international purchasing, the notifying party considers the relevant geographic market to be at least EEA wide in scope. The Commission in case *COMP/M.2441 - Amcor/Danisco/Ahlstrom*, defined the geographic market as the EEA. The Commission's investigation and analysis broadly supported the view that the relevant geographic market for flexible packaging is the EEA though some market participants indicated a trend towards a wider market than the EEA.
28. For the purposes of this case, the exact definition of the geographic market can be left open, since, in all alternative market definition considered, effective competition would not be significantly impeded in the EEA or in a substantial part of it.

### *Folding carton packaging*

29. The notifying party considers the market for folding carton packaging to be at least EEA-wide in scope but submits that for the purposes of this case and due to absence of horizontal or vertical links, it is not necessary to exactly define the relevant geographic market in this case. In *COMP/M.1792 – Ahlstrom/Capman/Folding Carton Partners*, the Commission did not consider it necessary to define the exact scope of the relevant geographic market.
30. For the purposes of this case, the exact definition of the geographic market can be left open, since, in all alternative market definition considered, effective competition would not be significantly impeded in the EEA or in a substantial part of it.

### *Closures*

31. The notifying party submits that the relevant geographic market for metal and plastic closures is at least the EEA. In case *IV/M.603 - Crown Cork & Seal/Carnaud Metalbox* the Commission concluded that the relevant geographic market is the EEA. The Commission's investigation and analysis broadly supported the view that the relevant geographic market for closures is the EEA though some market participants indicated that the market could be wider.
32. For the purposes of this case, the exact definition of the geographic market can be left open, since, in all alternative market definition considered, effective competition would not be significantly impeded in the EEA or in a substantial part of it.

## **VI. COMPETITIVE ASSESSMENT**

33. On the basis of the information submitted by the notifying party, Amcor is active in the EEA in flexible packaging and folding carton packaging and Schmalbach in PET packaging and closures. There appears thus to be no horizontal overlaps or material vertical links between the parties in the EEA. According to the notifying party, the rationale for the transaction is for Amcor to build a global speciality packaging business and to be able to offer PET and closure products regionally and globally.

### *PET packaging and preforms*

34. The notifying party submits that Schmalbach produces both plastic preforms and finalised PET bottles. Approximately [75-85%] of the company's EEA business involves the sale of preforms to customers who produce or fill their own bottles at the customer's facilities. The remaining [15-25%] of the sales are finished bottles. Of this [15-25%], [10-20%] are bottles produced at Schmalbach premises and then transported to customer facilities for filling. The final [0-10%] occurs as "hole-through-the-wall" sales. The company supplies PET packaging products for a wide range of end uses, including carbonated soft drinks (CSDs), mineral water, edible oils, dilute-to-taste drinks, chemical care, juices, cider/spirits/wine, milk, beer and other products. The company has no activities in bottle-filling.
35. The notifying party estimates that of the total figure of [...] million units of PET packaging sold in Europe in 2001, Schmalbach's share was [...] million units amounting to approximately [10-20%]. If one instead considers the market as total PET packaging in Europe excluding captive self-manufacture, the open market sales amounted to [...] units in 2001. Schmalbach's production for open market amounted to [...] units, which corresponds to [15-25%] share of the open market. This gives it a position of a market leader on these markets in the EEA. Its competitors include, *inter alia*, Alpla-Werke GmbH, Crown Cork and Seal, and Resilux N.V. The company's five largest customers account for approximately [50-60%] of its sales, including companies such as [...]. During the Commission's market investigation, market participants did not raise concerns as to the impact of the concentration on the market for PET packaging and preforms. The transaction will not result in horizontal overlaps or accretion of market share in the EEA.

### *Flexible packaging*

36. The notifying party estimates that the total sales of flexible packaging in the EEA amounted to EUR [...] billion in 2001. In the same year, Amcor's sales in the EEA of flexible packaging amounted to EUR [...] billion, which corresponds to a market share of [10-20%].

37. Should the market be distinguished by end use, the notifying party estimates that the company's total sales of flexible packaging for food end uses in the EEA in 2001 amounted to EUR [...] million corresponding to a market share of [10-20%] of total EEA flexible packaging sales for food end uses, which the notifying party estimates to amount to EUR [...] billion.
38. The notifying party submits that Amcor's total sales of flexible packaging for non-food end uses in the same year were EUR [...] million corresponding to a market share of [5-15%] of total EEA flexible packaging sales for non-food end uses. Amcor estimates the total EEA flexible packaging sales for non-food end uses to be EUR [...] billion in year 2001.
39. On the basis of the information obtained from the notifying party, Amcor is the market leader for flexible packaging in the EEA but it appears that there are a number of sizeable competitors active in the market including Alcan Packaging, Sealed Air Cryovac, VAW aluminium, Constantia, Pechiney/Soplaril, Wipak/Covexx and Clondalkin Group. The company's customers include companies such as [...].
40. During the Commission's market investigation, market participants did not raise concerns as to the impact of the concentration on the market for flexible packaging. The transaction will not result in horizontal overlaps or accretion of market share in the EEA.

#### *Folding Carton Packaging*

41. According to the notifying party, Amcor is active in the EEA in the production and supply of folding carton packaging for three selected market segments, namely tobacco, which represents [80-90%] of its sales, cosmetics, which represents [0-10%] of its sales, and confectionery representing [0-10%] of its sales. Amcor's total sales in the EEA of folding carton packaging in 2001 amounted to EUR [...] million, corresponding to approximately [0-10%] of total EEA folding carton packaging sales estimated by the notifying party to be EUR [...] billion.
42. During the Commission's market investigation, market participants did not raise any concerns as to the impact of the concentration on the market for folding carton packaging. The transaction will not result in horizontal overlaps or accretion of market share in the EEA.

#### *Closures*

43. Schmalbach produces two main types of metal closures (Twist-Off and Press-On Twist-Off) and a limited amount of plastic closures. Almost [90-100%] of the company's total closure production consists of closures for vacuum applications and [75-85%] are for "hot-fill". Metal closures are procured primarily by food/beverage customers in order to seal glass jars and bottles.<sup>4</sup> The company also makes a limited amount of plastic closures, largely for use on plastic bottles. The plastic closures are produced in the US for import to Europe.

---

<sup>4</sup> Metal closures are used for the following foods and beverages: juices, delicatessen and dressings, baby food, fruit and vegetables, jams and jellies, pickles, fish and meat, milk and coffee cream, puddings/olives/wine and yoghurt.



44. According to the notifying party, Schmalbach sold [...] billion metal closures [90-100%] and [...] million plastic closures [0-10%] in Europe in 2001. Amcor estimates that total metal and plastic closure sales in the top 7 European countries (Germany, France, Italy, Spain, Belgium, Netherlands and the UK) were approximately [...] billion units in 2001. The company supplied approximately [...] billion metal and plastic closures in these countries, corresponding to a market share of [15-25%] of total European closures sales in these countries. It believes that its share of total EEA closures sales would not be materially different.
45. The notifying party submits that Schmalbach's competitors include, *inter alia*, CMB Crown Cork & Seal, Massilly Group, Technocap, Metropak, and Vogel & Noot and customers major companies like [...].
46. In addition to closures, Schmalbach manufactures capping equipment and other related services [...].
47. The market investigation did raise any competition concerns on the market for closures. The transaction will not result in horizontal overlaps or accretion of market share in the EEA.

#### *Vertical links*

48. Amcor and Schmalbach do not currently supply each other with any products or services within the EEA. According to the notifying party, Amcor produces a small amount of polypropylene labels to go around bottles "wrap arounds" (sales EUR [...] million of total market of EUR [...] million, corresponding to a market share of [0-10%] in the EEA").
49. Amcor also produces a small amount of shrink sleeves (EUR [...] million of total market of EUR [...] million, corresponding to a market share of [0-10%] in the EEA). Schmalbach purchased only approximately [...] million units of wrap around and shrink sleeves in the EEA in 2001. None were purchased from Amcor. The notifying party considers that it is unlikely that Amcor would be able to supply these small amounts of either wrap arounds or shrink sleeves to Schmalbach for reasons of cost competitiveness, capacity and lack of expertise.
50. The only existing vertical link which Amcor has with Schmalbach is outside the EU. [...].

## **VII. CONCLUSION**

51. In the light of the above, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission

Franz FISCHLER  
Member of the Commission