Case No COMP/M.6025 -
ARDAGH/ IMPRESS

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 29/11/2010

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Subject: Case No COMP/M.6025 – Ardagh/ Impress
Notification of 26/10/2010 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 26/10/2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004[2] by which the undertaking Ardagh Glass Group SA (hereinafter "Ardagh", Luxembourg) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Impress Coöperatieve U.A. ("Impress", Netherlands), by way of purchase of shares.

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 internal market and the EEA Agreement.

I. THE PARTIES

3. Ardagh, headquartered in Luxembourg, is active in the supply of glass containers, including glass bottles and jars, as well as forming and inspecting machines for glass containers.

4. Impress, a Dutch company, supplies metal packaging products, including metal cans, mainly destined for processed food (food and seafood) and specialties (aerosols, paintings & coatings, dairy and custom). Impress is not active in beverage cans (i.e. destined for beer, soft drinks and energy drinks).

II. THE OPERATION AND THE CONCENTRATION

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1 OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

2 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

5. On 24 September 2010, Ardagh and the owners of Impress signed a Sale and Purchase Agreement according to which Ardagh intends to acquire all shares of Impress.

6. Through the operation, Ardagh acquires sole control over Impress by way of purchase of all shares. The transaction is therefore a concentration within the meaning of Article 3 of the Merger Regulation.

III. EU DIMENSION

7. The concentration has an EU dimension under Article 1(3) of the Merger Regulation. The combined aggregate worldwide turnover[3] of both, Ardagh and Impress, is more than EUR 2.5 billion (Ardagh EUR 1.2 billion, Impress EUR 1.7 billion), in each of at least three Member States […], the combined aggregate turnover of both, Ardagh and Impress, is more than EUR 100 million; in each of at least three Member States […] the aggregate turnover of each, Ardagh and Impress, is more than EUR 25 million; and the aggregate EU-wide turnover of each, Ardagh and Impress, is more than EUR 100 million (Ardagh EUR […], Impress EUR […]). Also, neither Ardagh nor Impress achieves more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

IV. COMPETITIVE ASSESSMENT

1. Product market definition

1.1. Glass packaging

8. Glass container manufacturers supply packaging to the food and beverage industries, as well as containers for pharmaceuticals and certain toiletries and healthcare products. In the food industry, glass containers are used for a variety of processed and other foods, including baby foods, oils and sauces, condiments and yoghurt. In the beverage industry, glass containers are used for beer, spirits, wine and for non-alcoholic beverages such as mineral water, fruit juices and carbonated soft drinks.

9. Ardagh manufactures glass containers (including bottles and jars) but it does not manufacture glass flaconnage (glass produced to very exact technical specifications/measurements) for the pharmaceutical and cosmetic industry. The glass containers supplied by Ardagh are destined for the wine & spirits, beverages and, to a lesser extent, food industries.

10. The Parties submit that the glass container market is a distinct product market from the market for other forms of rigid packaging in general and metal packaging in particular. According to their information, there is no recent example of significant switching from glass to metal containers (or vice versa) and tendering by customers for both glass and metal cans does not take place.

11. In previous cases, the Commission has indicated that the packaging industry is divided in several markets based on a combination of the packaging material and the use made

[3] Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

of the packaging product[4]. It has also determined that the glass container market is a distinct product market and, in particular, that it is distinct from the metal packaging market[5].

12. The Commission also considered whether the market for glass containers should be further subdivided according to certain end use segments. In Owens-Illinois/BSN Glasspack[6], the Commission's market investigation confirmed a high level of supply side substitutability between the different types of glass containers but the Commission was able to leave open whether separate sub-markets (wine & spirits, other beverages, food) within the glass container market should be defined. Whether separate sub-markets within the glass container market should be defined can, however, be left open in this case since it does not affect the competitive assessment.

13. The market investigation has confirmed the absence of supply-side or demand-side substitutability between the different types of packaging materials, due to preservation constraints (not all products can be preserved in all types of packaging), production constraints (including filling technology), differing transport costs (glass is more costly to transport than metal cans or plastic), and commercial constraints (including consumers' preferences). Therefore, and in line with the findings in previous cases, glass packaging can be considered to constitute the relevant product market for the purposes of this decision.

1.2. Metal packaging

14. Impress is active in the metal packaging market, which comprises food cans, paint and coating cans, aerosol cans and beverage cans. Impress does not produce standard beverage cans or single-use beverage cans and its activities for beverages are limited to "party" beer kegs of 5/10 litres to be used in domestic settings and syrup cans.

15. The Parties submit that within the metal packaging products, a further division could be identified for food cans. That specific market segment has a significant interest for the case since it is an activity where Ardagh and Impress may share customers. With regard to food containers, the Parties submit that packaging materials are not interchangeable since food customers are generally driven rather by consumer preferences, legal restrictions or innovation specific to each material than by differences on price (metal prices are for instance more volatile than glass ones). The Parties are indeed not aware, in recent years, of cases where food customers would have switched a significant part of their containers procurements from glass to metal and vice versa.

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4 See for instance Commission decisions IV/ M.081 – VIAG/Continental Can (decision of 6 June 1991), IV/M.603 – Crown Cork & Seal/Carnaud Metalbox (decision of 14 November 1995), and IV/ M.1109 – Owens-Illinois/BTR Packaging (decision of 21 April 1998).

5 Commission decisions COMP/M.3397 – Owens-Illinois/BSN Glasspack (recitals 15 and 16 of the decision of 9 June 2004), and IV/M.1109 – Owens-Illinois/BTR Packaging (recital 19 of the decision of 21 April 1998).

6 See COMP/M.3397 – Owens-Illinois/BSN Glasspack (recitals 15 and 16 of the decision of 9 June 2004).

16. In previous decisions, the Commission has considered that metal packaging is a distinct product market[7]. The Commission has considered that there was a lack of substitutability between distinct packaging materials (including between glass and metal packaging) due to production and commercial constraints, including filling technology and consumers' preference. Moreover, in Crown Cork & Seal/Carnaud Metalbox[8], the Commission defined separate product markets for tinplate aerosol cans and metal food cans.

17. With regard to food specifically, the market investigation has confirmed that the choice of packaging depends on the product itself, the preparation as well as customer's preferences. It has also shown that the choice of packaging is constrained by the existing filling manufacturing capacities, as it is costly to change equipment to accommodate a new packaging material. Moreover, productions processes and transport costs significantly differ for according to the packaging material: metal cans are for instance easier to transport than glass containers. More generally, the absence of substitutability between the different types of food packaging has been confirmed by the market investigation.

18. Whether separate sub-markets within the metal packaging market should be defined can, however, be left open in this case since it does not affect the competitive assessment.

2. Geographic market definition

2.1. Glass packaging

19. In IV/M.1539 - CVC/Danone/Gerresheimer, the maximum economic supply distance for glass containers was estimated at 400-500km around a production plant. This conclusion was confirmed in Owens-Illinois/BSN Glasspack, although the market investigation showed that the economic supply distance tended towards a slightly lower range (300-400km) [9].

20. The parties submit that it is not necessary to reach a conclusion on the exact geographic market for glass containers as there are no horizontal or vertical overlaps between the parties whatever the geographic scope of the market.

21. In the present transaction, the exact geographic scope of the market for glass containers can indeed be left open since it does not affect the competitive assessment.

2.2. Metal packaging

22. The Parties submit that several indications suggest that the geographic scope of the metal packaging would be wider than national: the significant level of cross border

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[7] Commission decision COMP/M.1109 – Owens-Illinois/BTR Packaging.

[8] See Commission decision IV/M.603 – Crown Cork & Seal/Carnaud Metalbox (recitals 26-27 of the decision of 14 November 1995).

[9] Commission decisions COMP/M.3397 – Owens-Illinois/BSN Glasspack (recitals 15 and 16 of the decision of 9 June 2004), and IV/ M.1539 – CVC/Danone/Gerresheimer (recital 19 of the decision of 5 July 1999).

trade, the common cross border bidding for contracts and the presence of many multi national food operators.

23. The Commission has not defined the geographic definition of metal packaging but it has however considered, in one of the rare cases related to that market[10], various alternatives: EEA-wide, Northern Continental Europe and larger than national markets. The market investigation in this case indicates that markets are indeed wider than national.

24. The parties submit that it is not necessary to reach a conclusion on the exact geographic market for metal packaging as there are no horizontal or vertical overlaps between the parties whatever the geographic scope of the market.

25. In the present transaction, the exact geographic scope of the market for metal packaging can indeed be left open since it does not affect the competitive assessment.

3. Competitive assessment

3.1. No horizontal or vertical effects

26. The Parties are active in distinct material packaging, i.e. glass for Ardagh and metal for Impress. Therefore, there are no horizontal overlaps.

27. The Parties submit that Ardagh and Impress are not active in any of the upstream or downstream markets where the other is active. In particular, the machinery and equipment manufactured and assembled by Ardagh's subsidiary Heye International cannot be used to manufacture any type of metal cans. Hence, no vertical effects arise.

3.2. Conglomerate effects

28. Ardagh and Impress have a few common customers in relation to glass packaging and metal cans for the food sector. They do not have any common customer buying aerosol or painting & coating cans from Impress.

29. Ardagh and Impress have significant market shares in a number of national markets, respectively in glass packaging and food cans (Table 1). In particular, in Denmark, Ardagh has a market share of [70-80]% in glass packaging and Impress has a market share of [70-80]% in wet food cans. Other countries where at least one of the parties has high market shares in one of the product markets involved include Belgium, Germany, the Netherlands, Poland, Sweden and the UK.

10 See IV/M.603 – Crown Cork & Seal/Carnaud Metalbox.

Table1: Market shares of Ardagh and Impress in glass packaging and food cans

2009	Ardagh	Impress	
	Glass Packaging	Wet food cans	Dry food cans
Belgium	[20-30]%	[60-70]%	[40-50]%
Denmark	[70-80]%	[70-80]%	[0-5]%
France	[0-5]%	[30-40]%	[5-10]%
Germany	[30-40]%	[50-60]%	[20-30]%
Ireland	[10-15]%	<25%	<25%
Italy	[0-5]%	<25%	<25%
Netherlands	[30-40]%	[20-30]%	[40-50]%
Poland	[20-30]%	[20-30]%	[90-100]%
Sweden	[60-70]%	[5-10]%	not available
UK	[40-50]%	[30-40]%	[0-5]%
Other countries	not active	<25%	<25%

30. As explained above the relevant geographic market for glass containers has in previous cases been considered as a radius around the production plants and the relevant geographic market for metal containers has been left open. The market shares at national level nevertheless provide a clear indication about the strong position of the Parties on the glass and metal food can markets respectively.

31. The parties explain that glass containers and metal packaging are not economic complements, i.e. they are not worth more to a customer when used or consumed together than when used or consumed separately. They also point to the fact that glass containers and metal packaging are not generally purchased by the same set of customers for the same end use. They are not aware of any tender in the last five years in which the customers put in competition metal and glass packaging as alternative packaging solutions.

32. Nevertheless, Ardagh and Impress have a number of common customers. In addition, there are a number of product groups for which both glass containers and metal cans are used (for example, certain vegetables or certain fish products). For these products, the parties argue that the choice between metal and glass (and possibly other packaging) is determined by consumer tastes, technical aspects and marketing considerations and that food customers generally do not change their packaging mix due to changes in the prices of the different materials. Ardagh is not aware of relevant cases in the last few years where food customers switched a significant part of their containers procurement from glass to metal or vice-versa.

33. The parties argue that the merged entity will not, based on conglomerate effects, have the ability to foreclose. First they emphasize that they do not have a large pool of common customers and therefore only a very limited part of the demand for the parties' products could be affected by any potential tying or bundling strategy. For instance, the parties have […] common customers in Denmark, accounting for […] of Impress' total sales and […] of Ardagh's total sales in this country; […] common customers in Germany, accounting for […] of Impress' total sales and […] of Ardagh's total sales in this country; […] common food customers in the Netherlands, accounting for […] of Ardagh's total sales and […] of Impress' total sales in this country; no common customers at all in Sweden and the UK.

34. Second, the parties point to the fact that Ardagh and Impress face significant competitive pressure from a number of competitors that would be able to replace promptly the merged

entity should it raise its prices beyond a competitive level. Regarding metal cans, they stress the existing excess capacity and the fact that an important part of the food cans demand is represented by large international customers, some of which have own in-house production. The parties further indicate that Ardagh faces significant countervailing buyer power in glass containers as, in their view, (i) customers face no barriers to switching to competing suppliers, (ii) many customers use a multi-sourcing strategy in order to guarantee supply security, (iii) the majority of Ardagh's customers are large producers for beverages and food products.

35. The parties further explain that the merged entity will not have the incentives to foreclose. In their view, a pure bundling or tying strategy would be unsustainable, in that customers could simply reject the tied offer and purchase each product separately from competitors, therefore resulting in a loss of demand for the parties. A mixed bundling strategy (offering additional discounts for a joint purchase of the products) would require the parties to offer additional discounts on top of the discounts they currently offer to customers, which would be very costly in comparison to the likelihood that this would lead to competitor foreclosure, enabling the parties to increase prices or reduce choice for their customers.

36. Finally, the parties note that a bundling strategy would not affect price and choice. They point to the counter-strategies available to customers, who would be in their view able to retaliate in other geographical or product areas, thereby leading to a loss of sales and profits for the parties, or to sponsor new entry.

37. All common customers of Ardagh and Impress in countries where one of the parties has a market share above 25% were contacted in the market investigation, which showed that the merged entity would not have the ability to foreclose. First, most respondents tender separately for glass and metal packaging. Although they sometimes expressed concerns about the concentrated nature of the markets for metal cans and glass packaging, common customers of Ardagh and Impress consider that the parties are active on distinct markets. Second, although some respondents indicated that the bargaining power of Ardagh would increase, most respondents pursue a multisourcing strategy with respect to both glass packaging and metal cans and have switched between different suppliers in the past. Alternatives, globally but also at a local level, exist both for metal cans (e.g. Crown and Mevisa) and glass packaging (Owens-Illinois, Saint-Gobain and local suppliers).

38. In addition, some respondents to the Commission's market investigation expect a positive outcome from the transaction. In particular, they consider that the transaction would enable them to have only one supplier for both glass and metal packaging while still having the possibility to switch supplier for one or the other packaging material.

39. The proposed transaction, thus, does not lead to conglomerate foreclosure effects. In this regard, the concentration, therefore, does not raise serious doubts as to its compatibility with the internal market.

V. CONCLUSION

40. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the European Commission,
(signed)
Joaquín ALMUNIA
Vice-President of the European Commission