EN

Case No COMP/M.6128 -
BLACKSTONE/ MIVISA

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 25/03/2011

In electronic form on the EUR-Lex website under document number 32011M6128

Office for Publications of the European Union
L-2985 Luxembourg

EUROPEAN COMMISSION

Brussels, 25.3.2011

C(2011)2108

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M. 6128 – BLACKSTONE/MIVISA
Notification of 18.02.2011 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 18 February 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which the investment funds managed or advised by affiliates of The Blackstone Group L.P. ("Blackstone" or "Notifying Party", United States) acquire sole control of the whole of Sofamen XXI, S.A.U. including Mivisa Envases S.A.U. ("Mivisa", Spain) 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.

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.

I. THE PARTIES AND THE OPERATION

3. Mivisa is primarily active in tinplate food can manufacturing. In the EEA, [90-100]% of Mivisa's turnover relates to the sale of tinplate food cans and approximately [5-10]% of its turnover arose from selling stand-alone food can ends and metal caps to other food can makers. Mivisa has centralised manufacturing facilities in Spain and local assembly plants in Spain, the Netherlands, Hungary and Morocco.

4. Blackstone is a global alternative asset manager and provider of financial advisory services. It is headquartered in the United States. Blackstone operates as an investment management firm. Each company in its investment portfolio is independently operated, managed and financed.

5. Pursuant to a Share Sale and Purchase Agreement dated 29 of December 2010, Blackstone acquires indirect sole control of Mivisa. Hence, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[2] (Blackstone: EUR […], Mivisa: EUR […]). The combined aggregate EU-wide turnover of Blackstone and Mivisa is in excess EUR 250 million (Blackstone: EUR […], Mivisa: EUR […]). None of the Parties achieves more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

III. COMPETITIVE ASSESSMENT

7. Blackstone does not have any interest in any company which is active in the same market as Mivisa. One of Blackstone's portfolio companies with sales in the EEA, Stolle Machinery, Inc., ("Stolle") has activities that are vertically related to Mivisa. Stolle is active in the manufacturing of certain types of can-making machines and replacement parts. Blackstone has also interests in Graham Packaging Inc. ("Graham Packaging"), a provider of blow-moulded rigid plastic containers for beverages, food, personal care and personal speciality products, and other products, which is a neighbouring market to Mivisa's tinplate food can business.

1. RELEVANT PRODUCT AND GEOGRAPHIC MARKET DEFINITION

a) Production and sale of metal food cans

8. The Notifying Party submits that the market for metal containers is distinct from the market for other forms of packaging, noting that the Commission has considered such

[2] Turnover calculated in accordance with Article 5 of the Merger Regulation.

distinction in its previous decisions.[3] Furthermore, in line with previous Commission practice,[4] the Notifying Party considers that tinplate and aluminium food cans belong to distinct product markets.

9. The Notifying Party submits that food and beverage cans belong to separate product market. The Commission has previously looked at the food cans[5] and beverage cans[6] as separate product markets. Most of the respondents to the market investigation confirmed that beverage and food cans form two distinct product markets.

10. Depending on the production process there are two types of food cans: three-piece and two-piece cans.[7] Both types of cans can be used for food and beverages.[8] The Commission previously found that two-piece and three-piece food cans constitute a single product market.[9] The investigation was not fully conclusive on the question, and suggested that three-piece and two-piece cans are to large extent substitutable.

11. Further, the Notifying Party considers that two-piece cans can be further segmented according to the manufacturing process applied into so-called "draw/redraw" ("DRD") cans and Draw and Wall Iron ("DWI") cans. The Notifying Party claims that whereas DWI cans, which are typically taller are used for instance for vegetables are substitutable with three-piece food cans, the two-piece cans produced by DRD process are smaller, shallower cans (typically used for fish) which can not be considered as substitutable with three-piece food cans. While Mivisa is active in the manufacturing of both three-piece and two-piece food cans, it does not make any DWI two-piece cans.

12. The Notifying Party also submits that there is a separate product market for food can ends, which are made using different machines from those used to make food can bodies. There is no distinction between food can ends for three-piece food cans and two-piece food cans. However, the Notifying Party submits that beverage and food can ends belong to two separate markets.[10] Mivisa is only present in food can ends. With respect to stand alone food can ends, Mivisa sells predominantly easy open ends ("EOE"). The market investigation has shown that, although can bodies and can ends are usually purchased together from the same suppliers, a certain amount of can ends are traded on stand-alone basis.

13. As regards to the geographic market definition, the Notifying Party submits, in line with previous Commission decisions[11], that the scope of the relevant geographic market for

---

3 Commission decision of 29 November 2010, COMP/M.6025, Ardagh/Impress, Commission decision of 21 April 1998 COMP/M.1109, Owens-Illinois/BTR Packaging.

4 Commission decision of 29 September 2003, COMP/M.3225, Alcan/Pechiney (II).

5 Commission decision of 14 November 1995, IV/M.603 Crown Cork & Seal/CarnaudMetalbox.

6 Commission decision of 28 September 2001, COMP/M.2542, Schmalbach Lubeca / Rexam.

7 Three-piece cans consist of a cylindrical body and two "ends" which are ultimately bound to the body. For two-piece cans, the bottom of the can is integrated into the body and there is a separate top end.

8 Soda and bier cans are typically two-piece cans produced by DWI process. A third type of three-piece cans is used for other, general application (e.g. aerosols).

9 Commission decision of 14 November 1995, IV/M.603, Crown Cork & Seal/CarnaudMetalbox.

10 The Commission had previously recognised a product market for can ends in Commission decision of 14 November 1995, IV/M.603, Crown Cork & Seal/CarnaudMetalbox. As the Notifying Party submits, since most beverage cans are used for carbonated soft drinks or beer, there is a distinction between beverage can ends and food can ends. Beverage can ends are required to meet standards imposed on containers which hold their contents under pressure to avoid leakage or, even, explosions.

11 Commission decision of 14 November 1995, IV/M.603, Crown Cork & Seal/CarnaudMetalbox.

can bodies is national and/or trans-border regional. The Notifying Party further submits that Spain and Portugal constitute a single geographic market.

14. As regards the stand-alone food can ends, the Notifying party considers such market to be global. The results of the market investigation suggest that, should a market for stand-alone foods can ends be distinguished, the relevant geographic market might be wider than national.

15. In any case, the definition of the relevant product and geographic market for the products concerned can be left open since the transaction would not raise any competition concerns under any potential market definition.

b) Production and Sale of Food Can-Making Machines

16. The Notifying Party, in the absence of Commission's precedents, submits that a distinction should be made according to the final purpose of the can-making machines between food can making machines; beverage can making machines and general can making machines (which includes items such as paint and aerosol cans). According to the Notifying Party, the machines for each of the mentioned can categories are different. Typically, the production of food cans requires less sophisticated machines than the production of beverage cans. Food can machines are also typically standardised involving lower speeds.

17. Within food can-making machines, a further distinction can be made between machines to produce can bodies and machines to produce can ends[12]. Stolle produces can-making machines for two-piece can bodies: cupping presses[13], DWI bodymakers[14] and testing equipment. Stolle produces furthermore can-end making machines, namely shell presses[15], liners[16], conversion press[17] and testing equipment.

18. As regards the geographic market definition, the Notifying Party submits that the geographic market for food can-making machines is global since most relevant food can-making machines manufacturers have a worldwide presence serving a globally spread customer base.[18]

19. For the purpose of the assessment of the transaction, the Commission assesses the effects of the transaction for each type of machine separately both at global at EEA level. Since the transaction does not raise any competition concerns under any potential market definition, it is not necessary to define the exact markets.

---

12 Most of the significant food can-making machine manufacturers produce both types of machines.

13 Cupping presses are composed of a press and a so-called die set. A die set is made up of tooling that is actually used to cut and form the can and other parts that support the tools forming and cutting the can.

14 DWI bodymakers are composed of a press and a die set.

15 Shell presses are composed of a press and a die set.

16 Liners, by applying a bead of compound to the inside curl of the shell, serve as a gasket to prevent the metal can end and metal body from undergoing a chemical reaction.

17 Conversion press is used to produce easy open ends.

18 All of Stolle's manufacturing facilities are located in the United States. Nevertheless, Stolle sells can-making machinery to customers throughout the world from these plants.

c) Production and Sale of Rigid Plastic Food Containers

20. The Notifying Party considers that plastic containers belong to a distinct product market[19] than metal food cans and that the market would be EEA-wide in scope[20].

21. The Commission in its previous decisions relating to beverage or liquid food containers considered this market as separate and took the position that the plastic container market may be further segmented based on the type of resin used to manufacture the product[21], and considered the market to be EEA-wide.

22. In any event, in the present case it is not necessary to reach a conclusion on the definition of the relevant market, since the transaction does not raise any competition concerns under any potential market definition.

2. COMPETITIVE ASSESSMENT

23. As noted above, the transaction does not lead to any horizontally affected markets since no company controlled by Blackstone is active on the same relevant product markets as Mivisa.

Vertical relationships

24. The food can machine producer controlled by Blackstone, Stolle inter alia produces different type of two-piece (but not three-piece) food can machines and food can-end machines which are vertically related to the production of food cans and food-can-ends in which Mivisa is active.

25. As regards the vertical relationship between the Stolle's food can making machines and production of food can activities of Mivisa, the proposed transaction leads to vertically affected markets in Spain and in Portugal, where Mivisa's share of tinplate food cans is approximately [30-40]%.

26. As regards food can-ends traded on a stand alone basis (i.e. without the can body). Mivisa sales to third parties primary relates to easy open ends, where Mivisa's market share is below 25% under any potential geographic market ([10-20]% globally, below [20-30]% in the EEA, and [0-5]% in Iberia).

a) Input foreclosure

Food can body making machines

27. As Mivisa's activity is focused on Spain and Portugal, the investigation sought to confirm that Stolle would not have the ability and the incentive to foreclose Mivisa's Iberian competitors from access to food-can making machines.

---

19 In the view of the Notifying Party, the different resin types used for the production are substitutable and that customers would switch between resins in response to a significant non-transitory increase in price.

20 On the basis of the ability to both cost-effectively ship rigid plastic food containers over long distances, and set up on-site packaging plants at customers' locations.

21 Commission decision of 28 June 2002 COMP/M.2843 Amcor/Schmalbach-Lubeca; Commission decision of 23.September 1999 IV/M.1656 Huhtamaki Oyj/Packaging Industries Van Lee,; Commission decision of 30 October 2001 Case No. COMP/M.2416 Tetra/Laval.

28. Based on the Notifying Party's estimates, Stolle's market share on the basis of the installed base of food can making machines is approximately [20-30]% both on a global market and on an EEA market. In 2009, Stolle represented [0-5]% of the global sales of food can-making machines and [0-5]% in the EEA. Moreover, as detailed below, there is a number of alternative suppliers of food can machines able to supply food can manufacturers. Even looking at the particular types of machines manufactured by Stolle, the merged entity would also not be capable to engage into an input foreclosure strategy.

29. As regards food can making machines for the production of can bodies, Stolle produces only two-piece can machines. Table 1 shows Stolle's market shares in each of the can making machines concerned.

Table 1 – Share based on installed base of Stolle Two-Piece Food Can Body Machines [22]

Estimated Stolle Share of Installed Base	Worldwide	EEA
Cupping Press	[50-60]%	[50-60]%
DWI Bodymaker	[30-40]%	[20-30]%
Testing Equipment	[5-10]%	[0-5]%

Source: Notifying Party's estimates

30. It can be concluded that any foreclosure strategy is unlikely. First, as submitted by the Notifying Party and confirmed by the investigation, none of these machines are unique or special and there are several alternative suppliers for each those can body making machines in which Stolle has significant market shares. Cupping presses can be supplied by, for example Soudronic AG, Schuler AG, The Minster Machine Company; TG Can International and CarnaudMetalbox. DWI Bodymakers are produced by CarnaudMetalbox Engineering and OKL Can Line Inc. Additionally, as these machines are purchased for long term (20-25 years), the success of an eventual foreclosure strategy is strongly mitigated.

Food can-end machines

31. Similarly, Stolle would have no ability to foreclose Mivisa's competitors from machines used for the production of food can ends.

Table 2 – Share based on installed base of Stolle Food Can End Machines [23]

Stolle	Worldwide	EEA
Shell Press	[50-60]%	[10-20]%
Liners	[40-50]%	Less than [20-30]%
Conversion Press	[50-60]%	[50-60]%
Testing Equipment	[5-10]%	[0-5]%

Source: Notifying Party's estimates

22 Source: Form CO.

23 Source: Form CO.

32. As indicated in Table 2, Stolle is a substantial producer of shell presses, liners and conversion presses. However, as the Notifying Party submits and the market investigation confirmed, there are other alternative suppliers of food can end machines for all three categories. For shell presses, the main suppliers are Soudronic AG, Alfons Haar, Rainer Naroska Engineering and The Minster Machine Company. For food can end liner machines, Stolle competes against Soudronic, CarnaudMetalbox and Rainer Naroska Engineering. Similarly, Stolle has numerous competitors in the manufacture of food end conversion presses, including DRT Manufacturing Co., Alfons Haar, The Minster Machine Company and Rainer Naroska Engineering. The market investigation confirmed that there are several alternatives suppliers for these food can end machines.

Spare parts

33. The market investigation also focused on the issue whether any of Mivisa's competitor currently using Stolle's machines could be hindered to find appropriate spare parts or tooling, should this be necessary. It appears that it is unlikely that Stolle would be able to foreclose Mivisa's competitors by refusal to provide the relevant spare parts of tooling for its machines.

34. Although certain respondents to the market investigation indicated that Stolle's assistance would be required to obtain certain specific spare parts for Stolle machines, or alternatively they would need technical drawings in order to acquire such parts or tooling outside of Stolle, the majority of Stolle's customers participating in the investigation considered the scenario where Stolle would stop supplying them as merely hypothetical.

35. First of all, components of Stolle machine-bodies rarely need a replacement,[24] which mitigates the risk of any successful foreclosure strategy. Stolle produces the DWI Bodymaker press and liner machines itself. For other machines concerned (i.e. cupping press, shell press and conversion press) Stolle buys the presses and tooling from other suppliers and assemble the press with die sets to form the finished machines. Should food can manufactures need replacement for these parts of the machines, they can obtain the spare parts from Stolle's suppliers of cupping press, shell press and conversion press, (such as, e.g The Minster Machine Company and Shuler AG) as well as from other alternative spare parts suppliers (such as, RAM Machine Repair Co, Oberg, DRT Manufacturing Co.) Finally, the Notifying Party indicates that alternative spare part suppliers for DWI Bodymakers, include OKL Can Line Inc., CarnaudMetalbox. The alternative spare parts suppliers for liners include Custom Machining Corporation "("CMC""), and potentially Soudronic, Alfons Haar, Rainer Naroska Engineering, CarnaudMetalbox Engineering, Cevolani SpA and W.R. Grace & Co.

36. Unlike the can making machines in itself, the tooling, used by the machines which routinely comes into contact with the metal used to produce the can, needs to be replaced regularly. As a general rule, Stolle's customers own themselves also the relevant drawings and can buy replacement tooling for the cupping press, shell press and conversion press either directly from Stolle’s suppliers or from independent suppliers including Mercier, Oberg, Crown/HV, RAM and Standard Engineering. Stolle does not make any tooling or parts forming the die sets for DWI bodymakers and liners. Stolle's clients already today source them from third parties and not from Stolle.

---

24 Approximately every 10 years in case of a cupping press.

37. According to the estimates of the Notifying Party, it supplies less than [20-30]% worldwide and even less in the EEA of the spare parts for the food can body and food can end machines it produces and it provides approximately [10-20]% of the maintenance services for its machines.

38. The limited number of food can and food can end producers who use Stolle machines in their respective Iberian facilities use conversion presses or liners. The investigation has also revealed the majority of these clients have received technical drawings for wear tooling from Stolle. Respondents also indicate that, although burdensome, it is technically possible to reverse engineer the tooling.

39. Furthermore Blackstone is unlikely to have incentives to engage in a foreclosure strategy. To engage in a foreclose strategy would put in danger Stolle's customer relationships with can manufactures competing with Mivisa in Iberia, and potentially with can-ends manufacturers on the global market. Such behaviour would result in the damage of Stolle's reputation with a number of its clients, which seems disproportionate to the potential benefits to be achieved downstream by Mivisa. According to the Notifying Party estimates, Mivisa's installed base of food can making machines on a worldwide basis is below [5-10]%. Thus it seems to be unlikely that Stolle would have the incentive to stop selling to other customers.

Conclusion

40. In view of the above, it is concluded that the merged entity is unlikely to embark in foreclosure strategies in relation to food-can making machines.

b) Customer foreclosure

41. During the investigation certain can-making machine producers expressed concerns indicating that they would lose Mivisa as a customer.

42. However, according to the Notifying Party estimates, Mivisa's capital expenditure on food can making machines was approximately EUR […] which represented less than [0-5]% of worldwide purchases and roughly [10-20]% of the EEA-wide purchases of food can making machines in 2009, and its installed base of food can making machines on a worldwide basis is below [5-10]%. This shows that Stolle's competitors would have access to a sufficiently broad customer base following the transaction.

43. Furthermore, the Notifying Party notes that Stolle makes only DWI two-piece can body machines. However, most of food cans sold in the EEA (80%) are three-piece cans. Mivisa will have to continue purchasing machines for production of such cans from other suppliers.

<u>Neighbouring markets</u>

44. As noted above, Blackstone has interests in Graham Packaging active in the production of rigid plastic food containers, a business which is a neighbouring market to Mivisa's tinplate food can business.

45. The transaction raises no competition concerns in respect to this market. Graham Packaging's share of rigid plastic food containers does not exceed [20-30]% in any

Member State including Spain and Portugal. At the EEA-wide level, Graham's share is less than [5-10]%. Thus, in case of any tying strategy post transaction, customers could go to alternative suppliers. Furthermore, Mivisa and Graham Packaging have no common customer in Iberia, excluding the ability to engage into any tying strategy.

IV. CONCLUSION

46. 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 Commission
(signed)
Neelie KROES
Vice-President