

*Case No COMP/M.5790 – LIDL/  
PLUS ROMANIA/  
PLUS BULGARIA*

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERCER PROCEDURE**

---

Article 9 (3)  
Date: 28.6.2010



EUROPEAN COMMISSION

Brussels, 28.6.2010  
C(2010) 4527

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**COMMISSION DECISION**

**of 28.6.2010**

**partly referring case No COMP/M.5790 – Lidl/ Plus Romania/ Plus Bulgaria**

**to the competent authorities of ROMANIA,**

**pursuant to Article 9 of Regulation (EC) No 139/2004**

# COMMISSION DECISION

of 28.6.2010

**partly referring case No COMP/M.5790 – Lidl/ Plus Romania/ Plus Bulgaria  
to the competent authorities of ROMANIA,  
pursuant to Article 9 of Regulation (EC) No 139/2004**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No. 139/2004 of 20.1.2004 on the control of concentrations between undertakings<sup>1</sup> (hereinafter, ‘the Merger Regulation’), and in particular Article 9(3) thereof,

Having regard to the notification made by Lidl GmbH Germany on 5 May 2010, pursuant to article 4 of the said Regulation,

Having regard to the request of the Romanian Competition Council of 3 June 2010,

WHEREAS:

1. On 5 May 2010 the Commission received notification of a proposed concentration by which the undertakings Lidl Romania GmbH (Germany), WE Beteiligungs GmbH (Germany) and S.C. Lidl Romania S.R.L. (Romania), belonging to the Schwarz group ("Schwarz"), acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertakings Pludi Market SRL (Romania), Tengelmann Real Estate International SCS (Romania) and Tengelmann Real Estate International SRL (Romania) (together "Plus Romania"), and by which the undertaking Lidl Bulgaria GmbH (Germany), also belonging to the Schwarz group, acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertakings Plus-Bulgaria Targovia KD (Bulgaria), Bulgaria Targovia EOOD (Bulgaria), Tengelmann Real Estate International Bulgaria KD (Bulgaria) and Real Estate International Bulgaria EOOD (Bulgaria) (together "Plus Bulgaria") by way of purchase of shares.
2. By letter of 3 June 2010, Romania requested the referral to its competent authorities of the Romanian part of the proposed concentration with a view to assessing it under the Romanian national competition law pursuant to Article 9(2)(b) of the Merger Regulation ("the request").

## I. THE PARTIES

3. **Lidl** is a German discount chain belonging to the Schwarz group, a German-based retailer operating more than 9,000 stores in 23 countries in Europe (including Romania and Bulgaria)<sup>2</sup>.

---

<sup>1</sup> OJ L 24, 29.1.2004, p.1. 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.

4. **Plus** Romania and Plus Bulgaria are retailers of daily consumer goods. They currently belong to the Tengelmann Warenhandels-gesellschaft KG ("Tengelmann", Germany), which is active in the sector of retail of daily consumer goods and textiles, as well as in the DIY ("do-it-yourself") sector in Europe.

## **II. THE OPERATION AND THE CONCENTRATION**

5. On [...], the parties signed a Sale and Purchase Agreement ("SPA") covering the acquisition of the Romanian and Bulgarian retail activities of Plus. The two transactions are linked by condition so that one transaction cannot be carried out without the other. Therefore, the proposed transaction is to be treated as a single concentration as they are interdependent. Plus Romania and Plus Bulgaria are sold by the same parent, Tengelmann, and ultimately acquired by the same company, Schwarz group. As a consequence, the Schwarz group will (indirectly) acquire sole control over the activities of Plus Romania and Plus Bulgaria within the meaning of Article 3 of the Merger Regulation.
6. The proposed operation is therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. UNION DIMENSION**

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup> (for Schwarz group EUR [...] million, for Plus Romania EUR [...] million, for Plus Bulgaria EUR [...] million). At least two of them have a Union-wide turnover in excess of EUR 250 million<sup>4</sup> (for Schwarz group EUR [...] million, for Plus Romania EUR [...] million, and Plus Bulgaria EUR [...] million), and Schwarz does not achieve more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

## **IV. ASSESSMENT**

8. The Bulgarian Commission on Protection of Competition made a request both under Articles 9(2)(a) and 9(2)(b) of the Merger Regulation, seeking a referral of the Bulgarian part of the notified concentration. Following this request, the Romanian Competition Council (hereafter "the CC") has also requested a partial referral under article 9(2)(b) of the Merger Regulation for the Romanian part of the transaction.
9. The transaction leads to horizontal overlaps in the market for the retail sale of daily consumer goods. Plus is already present in Romania. The Schwarz Group, to which Lidl belongs, is active in Romania via its subsidiary Kaufland. Furthermore, Lidl has currently several construction projects to enter the Romanian market in the next years.

---

2 Schwarz group is active in both Romania and Bulgaria via its subsidiary Kaufland.

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).

4 [...].

## A. Market definition

### 1. Relevant product market

10. The proposed transaction concerns the market for retail and procurement<sup>5</sup> of daily consumer goods in Romania and Bulgaria.

#### *Retail market for daily consumer goods*

11. The notifying party, in line with the past Commission practice, submits that the relevant product market is the market for retail of daily consumer goods carried out by modern retail outlets such as supermarkets, hypermarkets and discount chains, etc.<sup>6</sup> Departing from the Commission's practice, the notifying party further submits that other stores such as neighbourhood stores<sup>7</sup>, agro & food stores, kiosks and grocery stores are also part of the relevant market. In addition, it underlines the existence of competitive pressure from other shop formats such as Cash&Carry or DIY. In the opinion of the notifying party, the product market should further comprise traditional forms of retail such as sidewalk sales or farmers markets, given that, according to the parties, these retail channels would still play an important role in the retail of daily consumer goods market in Romania.
12. With respect to the product basket of daily consumer goods, the notifying party submits that the retail market of daily consumer goods would only include so called food and near-food goods for daily consumption such as toiletries and cosmetics, detergents or cleaning agents. Genuine non-food products such as textiles, tools, toys or household articles on the contrary should be excluded from the product market definition. Previously, the Commission found that daily consumer good retailers only occasionally sell non-food products; it nevertheless left the exact definition of the product basket open<sup>8</sup>.
13. The market investigation showed that the market is that of retail of daily consumer goods and that it comprises modern distribution channels, which may include besides supermarkets, hypermarkets and discounters, other types of shops such as neighborhood stores. It appears that in the case of the Romanian retail market, the farmers markets, kiosks, sidewalks and petrol service stations are unlikely to be in the same relevant market with the hypermarkets, supermarkets and discounters.

---

<sup>5</sup> According to the notifying party, the combined market shares in any of the alternative market definitions of the procurement market are under 10%. As such, the procurement market is not a technically affected market, and is not further discussed in this decision. Moreover, the market investigation did not point to any competition concerns on the procurement markets in Romania.

<sup>6</sup> COMP/M.4590 – *REWE/Delvita* – para. 14; COMP/M.5134 – *Spar/Plus Hungary* – para. 11; COMP/M.2604 – *ICA Ahold/Dansk Supermarked* – paras. 10, 11; COMP/M.4686 – *Louis Delhaize/Magyar Hipermarket Kft.* – para. 8; COMP/M.3905 – *TESCO/Carrefour* – para. 10; COMP/M.5047 – *REWE/Adeg* – para. 24.

<sup>7</sup> Such stores include small or medium size independent outlets associated with a retail organization or grocery retail company.

<sup>8</sup> COMP/M.3905 – *Tesco/Carrefour* – paras. 16, 17; COMP/M.4590 – *REWE/Delvita* – para.14; COMP/M.5047 – *REWE/Adeg* – paras. 25, 26.

## 2. Relevant geographic market

### *Retail market for daily consumer goods*

14. The Commission has in its practice delineated the geographical market for the retail sale of daily consumer goods, according to demand side considerations, by the boundaries of a territory where consumers can easily reach the outlets within 20 to 30 minutes driving time<sup>9</sup>. In the *Rewe/Adeg* case<sup>10</sup>, the Commission indicated that the scope of the geographical market can be wider than local should the radiuses defined by the different travel times across the respective regions overlap. This territory may also be larger (e.g. regional or national) if different local areas are connected in such a way that they result in overlapping circles. The delineation of each local area can only be undertaken on a case by case basis by taking into account specific local circumstances. It has also to be taken into consideration that competition between the main players on the market is often not limited to the local areas, in particular when the product assortment is determined on a national level or advertising is carried out nationwide<sup>11</sup>.
15. The notifying party considers the geographic market for the retail sale of daily consumer goods in Romania to be national in scope. It also submits that the competitors are operating throughout the entire territory and that the decisive parameters of competition, such as business strategy, product assortment, promotions or prices are determined on a national level.
16. During the market investigation in Romania, some respondents indicated that the retail market would be national in scope as the same distribution companies would be present everywhere and they would generally have a centralized pricing and assortment strategy. However, other respondents indicated that there are particularities as to the purchasing power, demographic structure or customers' preferences in different Romanian regions. Moreover, from a demand-side perspective, the majority of the respondents indicated that the customers' driving distance would generally be 20-30 minutes. At this stage, it appears that these circles do not overlap in such a way that would lead to similar conditions of competition at the national level in Romania.
17. In the light of the above, at this stage, and for the purpose of the present decision, it is therefore considered that the scope of the relevant geographic market is most likely local.

### **B. Market data**

18. The notifying party has explained throughout the pre-notification phase that it is very difficult to find detailed and reliable data for the relevant markets in Romania.
19. The notifying party used the Planet Retail report "Modern Grocery Distribution"<sup>12</sup> in order to estimate the total market size in Romania. The report encompasses sales of supermarkets, hypermarkets, discount channels and other chain stores such as

---

<sup>9</sup> COMP/M.1221 – Rewe/Meinl, par. 18, M.5047 – Rewe/Adeg, par 27, M.5176- CVC/Schuitema, par 12.

<sup>10</sup> COMP/M.5047 – Rewe/Adeg, par 27.

<sup>11</sup> COMP/M.5134 – *Spar/Plus Hungary* – paras. 13, 14; COMP/M.2604 – *ICA Ahold/Dansk Supermarked* – para. 12; COMP/M.4590 – *REWE/Delvita* – para. 18; COMP/M.5047 – *REWE/Adeg* – para. 27; COMP/M.3905 – *Tesco/Carrefour* – para. 18; COMP/M.4686 – *Louis Delhaize/Magyar Hipermarket Kft* – para. 15.

<sup>12</sup> Source of statistics – Planet Retail.

neighborhood stores, agro & food stores, kiosks and grocery stores, etc and thus goes beyond the definition of modern retail in the Commission's practice. The turnover of the traditional retailers (street-sales, permanent farmers markets, weekly-markets etc) which, according to the notifying party, would still play a very important role in Romania, is not included in the total market size.<sup>13</sup>

20. For local markets, which are defined on the basis of 30 minutes drive circles (isochrones) starting from each Plus and Kaufland outlet, the notifying party provided estimations of their combined market shares based on the selling surface that are considerably higher than markets shares based on turnover. The notifying party has only very limited information on selling surface of especially their smaller local competitors and therefore only considered the larger retailers (hypermarkets, supermarkets and discounters, large neighborhood stores, etc) for the purpose of the calculation of their market share. Therefore, the total market size based on the selling surface appears to be underestimated. As a consequence, the parties' combined market shares based on the selling surface seem to be overestimated. The difference of market shares in local markets based on turnover versus market shares on selling surface can be explained to a large extent by the fact that the selling surface of neighborhood stores and smaller chain-stores, which is included in the estimation of the market shares based on turnover, was not accounted for by the notifying party in the estimation based on selling surface.<sup>14</sup>
21. The precise calculation of the market shares was difficult in the Romanian markets, as there are either missing or barely comparable statistics on market data. While the market data based on the turnover appears to under-estimate the parties' market shares, the market data based on the selling surface appears to over-estimate parties' market shares.

### **C. Assessment under Article 9 (2)(b) of the Merger Regulation**

22. The Romanian NCA argues that the conditions of Article 9(2)(b) of the EC Merger Regulation are fulfilled for 13 local markets where the combined market share of the parties in terms of turnover exceeds 15%.<sup>15</sup>
23. Under Article 9(2)(b), a concentration has to affect competition in a market within that Member State, which presents all the characteristics of a distinct market and which does not constitute a substantial part of the common market. If these conditions are met, the Commission has an obligation to refer the case.

---

<sup>13</sup> In order to provide market shares for the local retail markets, the notifying party calculated the annual average spending per citizen in Romania and Bulgaria based on the Planet Retail Report and multiplied this figure by the number of inhabitants of the local area. In addition, the party provided further information from other statistical sources that show the total market volume estimated by Planet Retail largely corresponds to a majority of other information sources.

<sup>14</sup> The notifying party provided for some local markets on a case study basis very detailed information, including own measurements of selling surface of, for example, neighborhood stores. While the resulting market shares based on selling surface were lower, even for the case studies, the entire difference to the market shares based on turnover could not be explained. Therefore it appears that the local stores have a considerable higher turnover per square meter than the modern retailers.

<sup>15</sup> The Commission identified 12 local markets with combined market shares exceeding 15%, namely: [...].

### Distinct market

24. In its answer to the referral request, the notifying party argues that Romania cannot be considered a "distinct market" due to the particularities of the current transaction. The concentration would be part of the general strategy of Lidl to expand into South-Eastern Europe and therefore both the Romanian and the Bulgarian markets should be considered in this perspective.
25. This argument, although indicative for the economic rationale of the transaction has to be considered in the context of whether Romanian markets constitute or not distinct markets. As discussed in the market definition section, the market is likely to be local in scope. Therefore, the above mentioned geographic Romanian markets present all the characteristics of distinct markets.

### Not a Substantial Part of the Common Market

26. When assessing whether any market forms a substantial part of the common market, the Commission, in the past, considered factors such as the economic importance of the services and territories concerned, the volume of cross-border trade concerned, as well as general geographic factors.
27. Such situations are generally limited to markets with a narrow geographical scope, within a Member State. The 12 local affected markets in Romania are small markets, situated within Romania, with a very limited, if any, volume of cross-border trade, and targeting a limited number of customers in the respective geographical areas. Therefore, it can be concluded that these markets do not constitute substantial parts of the common market.

### Impact on competition

28. The Romanian NCA considers that competition could be affected in several markets as a result of the proposed operation, more precisely in 13 areas<sup>16</sup> in Romania where the combined market shares based on turnover of the parties lies between [10-20]% and [20-30]% [...]. At present, Kaufland is the leader of the retail market in Romania, and according to the *prima facie* analysis of the CC concerns have been raised regarding the potential of the proposed transaction to distort competition on the Romanian retail market, and especially on those relevant markets where the cumulated market shares of the parties exceed the threshold of 15% and where Kaufland would consolidate its position. The transaction would therefore affect competition within these markets.
29. At the local level, based on the turnover data provided in the notification, the transaction is likely to affect competition in 12 markets in Romania, not exceeding however a combined market share of more than 25% in any of these regions.
30. Based on the selling surface data, the transaction would lead to 33 affected local markets in Romania. As already explained, the market size based on selling surface appears to be under-estimated, since an important part of the market, which is included in the turnover data is not included in the surface market volume. Therefore, the market shares of the parties on the basis of selling surface are likely to be overestimated because of lack of statistical data. Nevertheless, even if the combined market shares of the parties of more

---

<sup>16</sup> The Romanian NCA does not specify the names of the 13 affected markets. Therefore the assessment will be based on the information provided in the notification.



than [30-40]% in 18 local markets in Romania [...] were in reality lower, it is still very likely that they would remain at a significant level.

31. In its answer to the referral request, the notifying party argues that the 13 markets where the market shares are above 15% (and lower than 25%) cannot be considered as markets where competition is affected.<sup>17</sup> Moreover, the notifying party argues that the Romanian markets would be dynamic and highly contestable. Potential competitors would show interest to enter the market. Moreover, existent competitors would have expansion plans. The notifying party also argues that, although in the same group, Lidl and Kaufland do not follow the same business concept so that in the end the concentration would bring about more choice for the consumer.
32. The market investigation showed indications as to new entries such as Lidl and Tesco and to the existence of competitors such as Metro, Carrefour, Real, Cora, Auchan, Billa, and Delhaize. However, in view of the important combined market shares of the parties on the basis of the turnover (as supported by the Romanian NCA) but also on the basis of the selling surface where the combined market shares of the parties exceed [30-40]% in 18 local markets in Romania, it can be concluded at this preliminary stage that the concentration affects competition in the above-indicated local Romanian markets. Regarding the notifying party's intra-group competition argument, it needs to be noted that Lidl and Kaufland are part of the same group and therefore considered as belonging to the same economic entity.
33. It can thus be concluded that the Romanian referral request meets the requirements of article 9(2)(b) of the EC Merger Regulation.

#### **D. Partial referral to Romania**

34. In its response to the referral request, the notifying party considers that the Commission is better placed to deal with the transaction as it has the market knowledge, the experience and the necessary language skills. Moreover, as the concentration affects two Member States, Romania and Bulgaria, the parties face an increased financial risk, delays and uncertainties related to the outcome of the investigations in the two Member States. [...]
35. However, the operation concerns both Romanian and Bulgarian retail markets. These are all local markets and the CC<sup>18</sup> has a recent and profound knowledge of the retail markets for daily consumer goods in Romania. Moreover, the Romanian NCA has recently conducted a market inquiry into the retail sector<sup>19</sup>. Therefore, the Romanian NCA is particularly aware of the current market conditions, as well as of some

---

<sup>17</sup> The notifying party furthermore argues that these market shares overestimate the parties' market position as the method of calculation of the market shares (based on turnover) would be conservative i.e. it does not include the traditional retail stores and does not take into consideration the specificity of Romanian customers' buyer power which substantially differ in bigger cities (where Kaufland is present) from smaller localities. As Kaufland is mainly present in big cities, a buyer power factor should have been higher (and therefore the market shares lower).

<sup>18</sup> Recent decisions on the retail market adopted by the Romanian CC: Nr. 43/ 30.06.2009 Mega Image SRL/ S.C. Mialan Comimpex S.R.L.; Nr. 17/ 12.03.2009 Auchanhyper SAS Franta/ SC MGV Distri Hiper SA Bucuresti/ SC MGV Foreign Acquisitions SRL Bucuresti; Nr. 2/18.01.2010 Polish Gamma Group S.a.r.l./Profi Rom Food SRL, Albinuta Shops SRL, DT Logistic SRL.

<sup>19</sup> Final report following the Opinion pool regarding the Functioning of the Retail Market, Romanian Competition Council 2008.

specificity in relation with the functioning of the retail for daily consumer goods in Romania. Hence, the Romanian NCA is in a very good position to deal with the Romanian part of the case.

## **V. CONCLUSION**

36. From the above it follows that the conditions for a referral under Article 9(2)(b) are met.

HAS ADOPTED THIS DECISION:

### **Article 1**

The notified concentration resulting in the acquisition of control of Plus Romania by Lidl is referred to the competent authority of Romania, pursuant to Article 9(3)(b) of Council Regulation (EC ) No 139/2004.

### **Article 2**

This decision is addressed to ROMANIA.

Done at Brussels, 28.6.2010.

For the Commission  
(signed)  
Maros Sefcovic  
Member of the Commission