

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

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

Article 9 (3)
Date: 28.6.2010



EUROPEAN COMMISSION

Brussels, 28.6.2010
C(2010) 4528

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 the case No COMP/M.5790 – Lidl/ Plus Romania/ Plus Bulgaria

to the competent authorities of the Republic of BULGARIA,

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

COMMISSION DECISION

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**partly referring case No COMP/M.5790 – Lidl/ Plus Romania/ Plus Bulgaria
to the competent authorities of the Republic of BULGARIA,
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 undertakings¹ (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 Competition on Protection of Competition of Bulgaria of 31 May 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), Tengermann Real Estate International SCS (Romania) and Tengermann 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), Tengermann 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 31 May 2010, the Republic of Bulgaria requested the referral to its competent authorities of the Bulgarian part of the proposed concentration with a view to assessing it under Bulgarian national competition law, pursuant to article 9(2)(a) and 9(2)(b) of the Merger Regulation ("the request").

¹ 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.

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).²
4. **Plus** Romania and Plus Bulgaria are retailers of daily consumer goods. They currently belong to the Tengelmann Warenhandelsgesellschaft 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, the 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 the 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 billion³ (for Schwarz group only 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 million⁴ (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 (hereafter "the CPC") 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 has also requested a partial referral under article 9(2)(b) of the Merger Regulation for the Romanian part of the transaction.

² Schwarz group is active in 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 [...].

9. The transaction leads to horizontal overlaps in the market for the retail sale of daily consumer goods. Plus is already present in Romania and Bulgaria. The Schwarz Group, to which Lidl belongs, is active in both countries via its subsidiary Kaufland. Furthermore, Lidl has currently several construction projects to enter the Romanian and Bulgarian market in the next years.

A. Market definition

1. Relevant product market

10. The proposed transaction concerns the market for retail and procurement⁵ 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.⁶ Departing from the Commission's practice, the notifying party further submits that other stores such as neighbourhood stores⁷, agro & food stores, kiosks and grocery stores are also part of the relevant market. In addition, the notifying party 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 types of commerce would still play an important role in the retail of daily consumer goods markets in Bulgaria.
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 open⁸.
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. At this preliminary stage it appears that in the case of the Bulgarian retail market, the farmers markets, kiosks, sidewalks and petrol service

⁵ According to the parties, 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.

⁶ 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.

⁷ Such stores include small or medium size independent outlets associated with a retail organisation or grocery retail company.

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

stations are unlikely to be in the same relevant market with the hypermarkets, supermarkets and the discounters.

2. Relevant geographic market

Retail market for daily consumer goods

14. The Commission has in its practice delineated the geographic market for the retail sale of daily consumer goods, according to demand side considerations, by the boundaries of a territory where the outlets can be reached easily by consumers (radius of approximately 20 to 30 minutes driving time⁹). In the *Rewe/Adeg* case¹⁰, 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. 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 nationwide¹¹.
15. The notifying party considers the geographic market for the retail sale of daily consumer goods in Bulgaria to be national in scope. It 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. The market investigation in Bulgaria showed mixed results as to the geographic scope of the market. Some of the respondents indicated that the market would be national in scope. However, the market investigation also showed that the customers' driving distance for the definition of the isochrones would be maximum 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 Bulgaria.
17. In the light of the above, and for the purpose of the present decision, it is therefore considered that the scope of the relevant geographic market is most likely local in scope.

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 Bulgaria.
19. The notifying party used the Planet Retail report "Modern Grocery Distribution"¹² in order to estimate the total market size in Bulgaria. The report encompasses sales of supermarkets, hypermarkets, discount channels and other chain stores such as

⁹ COMP/M.1221 – *Rewe/Meinl*, par. 18, M.5047 – *Rewe/Adeg*, par 27, M.5176 – *CVC/Schuitema*, par 12.

¹⁰ COMP/M.5047 – *Rewe/Adeg*, par 27.

¹¹ 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.

¹² Source of statistics – Planet Retail.

neighborhood stores, agro & food stores, kiosks and grocery stores, etc and is thus broader than 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 an important role in Bulgaria, is not included in the total market size.¹³

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 provides estimations of their combined market shares based on the selling surface that are considerably higher than market shares based on turnover. The notifying party submitted that it 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) for the purpose of the calculation of their market share. Therefore, the market size 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 of the total size of the market based on selling surface.¹⁴
21. The precise calculation of market shares was difficult in the Bulgarian markets, as there are either no or barely any 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 the parties' market shares.

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

22. The Bulgarian NCA argues that the conditions of Article 9(2)(b) of the EC Merger Regulation are fulfilled for the 12 local markets where the combined market share of the parties in terms of selling surface exceeds 15%.¹⁵
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 internal market. If these conditions are met, the Commission has an obligation to refer the case.

¹³ In order to provide market shares for the local retail markets, the parties calculated the annual average spending per citizen in Bulgaria based on the Planet Retail Report and multiplied this figure by the number of inhabitants of the local area. In addition, they 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.

¹⁴ 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.

¹⁵ [...].

Distinct market

24. In its answer to the referral request, the notifying party argues that Bulgaria 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 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 Bulgarian markets constitute or not distinct markets. As discussed in the market definition section, the market is likely to be local in scope (even considering the notifying party's submission that there would be some cross border-trade between cities such as Vidin, Ruse and Kozlodui). Therefore, the Bulgarian markets in the above mentioned geographic areas, present all the characteristics of distinct markets.

Non-Substantial Part of the Internal Market

26. When assessing whether any market forms a substantial part of the internal 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. This is the case for the 12 local markets in Bulgaria, which are all small markets, situated within Bulgaria, 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 a substantial part of the internal market.

Impact on Competition

28. The Bulgarian NCA considers that the concentration affects competition on a series of markets for the retail of daily consumer goods. According to the Bulgarian NCA, on the basis of the selling surface data, the new entity will enjoy post transaction very high market shares within 9 out of the 12 affected areas in Bulgaria. In 9 localities, the combined market shares based on selling surface exceed [30-40]% [...]¹⁶. Moreover, according to the CPC, competition in certain areas is very limited, with at most 2 or 3 retail chains being present in areas where the parties' combined market share exceeds 70%.
29. The transaction leads to horizontal overlaps in the market for the retail sale of daily consumer goods. Plus is already present in Bulgaria. The Schwarz Group, to which Lidl belongs, is also active in this country via its subsidiary Kaufland. Furthermore, Lidl has currently several construction projects to enter the Bulgarian market in the next years.

¹⁶ The CPC refers to 12 affected local markets out of which 9 are characterized by a particularly strong position (more than [30-40]% combined market share) of the parties in terms of market shares based on selling surface, as provided by the party in the notification. Although these local market shares appear to be over-estimated, it is still clear that the parties hold a strong position in these local markets, should selling surfaces of all modern distribution channels shops be taken into account for the estimation of the total size of the market.

30. Based on turnover data, the parties' combined market shares will remain under 15% in all local markets in Bulgaria, with one exception ([10-20]% in [...]). Based on the selling surface data, the transaction would affect competition in 12 local markets in Bulgaria. 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 appears to be overestimated. Nevertheless, even if the parties' combined market shares were lower, it is still very likely that they would remain at a significant level in at least the 9 affected market indicated above.
31. The notifying party argues that there is "no real risk" to competition as the market would be dynamic and highly contestable as the existing competitors would have expansion plans and other international retail chains such as Auchan, Edeka, and Tempo would be likely to enter the market. 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 Tesco and Real. Competitors such as Metro, Billa, Piccadilly, Carrefour, Rewe as well as the national chains Evropa, CBA, Fantastiko are also present in the market. However, at a local level, in a post-merger scenario, the parties would have very important market shares and as there are areas where the presence of other international chains is very limited, it can be concluded at this preliminary stage that the concentration does affect competition in 12 local markets and in particular in the 9 indicated local markets where parties' combined market share is higher than [30-40]% based on selling surface calculations. 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 Bulgarian referral request meets the requirements of Article 9(2)(b) of the EC Merger Regulation.

D. Assessment under Article 9(2)(a) of the Merger Regulation

34. The Bulgarian NCA considers furthermore that the conditions of Article 9(2)(a) of the EC Merger Regulation are also fulfilled. Under Article 9(2)(a), a concentration has to threaten to affect significantly competition in a market within that Member State, which presents all the characteristics of a distinct market. If these criteria are fulfilled, the Commission can exercise its discretion to refer the case or not.

Distinct market

35. As discussed above, 12 markets with combined market shares over 15% represent local markets within Bulgaria which present all the characteristics of a distinct market.

Impact on Competition

36. As discussed above, according to the notifying party's estimations of market shares based on selling surface, the concentration affects competition for the retail sale of daily consumer goods in the above mentioned 12 markets in Bulgaria. Moreover, in 9 local markets the parties' market share will be higher than [30-40]% [...]. In addition, according to the CPC, competition in certain areas between different retail chains is not strong, with only 2 to 3 retail chains at the most, and the parties' combined market share of over 70% is exceptionally high. It therefore appears that the concentration threatens to significantly affect competition in at least these markets.

37. However, as the requirements of Article 9(2)(b) are fulfilled, it can be left open whether the legal requirements of Article 9(2)(a) are also met.

E. Partial referral to Bulgaria

38. In its response to the referral requests, 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 respective Member States. [...]

39. However, the operation concerns both Romanian and Bulgarian retail markets. These are all local markets and the CPC¹⁷ has a recent and profound knowledge of the retail markets for daily consumer goods in Bulgaria. Therefore, the Bulgarian NCA is particularly aware of the current market conditions, as well as of some specificity in relation with the functioning of the retail for daily consumer goods in Bulgaria. Hence, the CPC is in a very good position to deal with the Bulgarian part of the case.

V. CONCLUSION

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

17 Recent decisions on the retail market adopted by the CPC – No. 416/12.06.2007, 212/18.03.2008, 389/20.05.2008 etc.

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

This decision is addressed to the REPUBLIC OF BULGARIA.

Done at Brussels, 28.6.2010.

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