EN

Case No IV/M.1109 - OWENS-ILLINOIS / BTR PACKAGING

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 21/04/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.04.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1109 - Owens Illinois / BTR Packaging
Notification of 04.03.1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 4 March 1998**,** the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Owens-Illinois, Inc. (O-I) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of BTR's Packaging Business Group (BTR Packaging) from BTR plc (BTR).

I. THE PARTIES AND THE OPERATION

2. O-I, an American corporation, is an international manufacturer of glass containers, the machinery to make these products, and plastic packaging products. O-I is a world-wide licensor of glass technology. In the EEA, O-I has glass container manufacturing operations in the UK (United Glass), Italy, Spain and Finland. O-I has also plastic manufacturing operations in the USA, Mexico and Finland.

3. BTR is a global engineering company listed on the UK and Australian Stock Exchanges. It currently controls the whole of BTR Packaging which is active in the EEA in the manufacture of glass containers in the UK (through its subsidiary Rockware Group Ltd.) and of plastic containers (through its subsidiary Continental

PET Technologies, Inc. (CPT). It also holds a 21.5% shareholding in Ardagh plc (Ardagh), a glass container producer located in Ireland. BTR Packaging has glass and plastic container manufacturing operations also in Australia, New Zealand, China, Indonesia, the USA, Mexico, Brazil, Hungary and Saudi Arabia.

II. CONCENTRATION

4. The proposed transaction will result in O-I acquiring the whole of BTR Packaging and thus sole control within the meaning of article 3(1)(b) of the Merger Regulation

III. COMMUNITY DIMENSION

5. O-I and BTR Packaging have a combined aggregate worldwide turnover in excess of ECU 5,000 million (O-I > ECU 4 billion; and BTR Packaging > [...][1]). Each of them has a Community-wide turnover in excess of ECU 250 million (O-I > [...][1]; and BTR Packaging > [...][1]), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

6. O-I and BTR Packaging have overlapping activities in glass containers and PET bottles. According to the parties, however, PET bottles are not an affected product market as the combined market shares of OI and BTR Packaging would be less than [...][2] in every Member State and the EEA as a whole.

7. O-I is active in the upstream market of glass container manufacturing equipment. This is however not an affected market, as OI's market share is less than 25%.

1. Relevant Product Markets

8. The parties' activities in the EEA overlap to a significant degree in the manufacture and sale of glass packaging containers. These glass containers are used to package food products, beverages (beer and soft drinks), and wine and spirits.

9. The parties consider that there is one relevant product market comprising not only all glass containers but also containers made from other packaging materials such as metal, plastic and carton. They parties claim that there is an ever-increasing and wide-ranging substitutability between glass and other packaging materials. From a functional/technical standpoint there would no longer be any particular food or beverage product which can only be packaged in glass. In addition, an increasing number of customers would have

1 Deleted; business secret.

2 Deleted; business secret: not an affected market.

flexible packaging facilities that enable them to operate with more than one packaging product. This would, according to the parties, create an environment where customers faced with price increases in glass containers would increasingly be inclined to switch to another material. In addition, the parties claim that consumer preferences would not preclude inter-material competition for most products and that the consumers would be willing to purchase the same product packed in a variety of packaging formats.

10. In previous decisions in the packaging industry, the Commission did not find that the relevant product market included all packaging materials. For food packaging the Commission concluded in its decision *IV.M.603 - Crown Cork & Seal/Carnaud MetalBox* that there was a separate market for metal food cans which would not include food containers made from glass or plastic (at para. 28). For beverage packaging, the Commission concluded in its decision *IV/M.081 - VIAG/Continental Can* stated that it could not accept that there is only one beverage packaging market comprising glass, plastic and cans. It considered that these products might belong to separate product markets which would only compete to a limited extent which would not be sufficient to ensure effective competition between these different products in the short term (at para. 14).

11. The Commission’s inquiry in this case confirms the previous findings that the relevant product market does not comprise all packaging materials. Almost all customers contacted by the Commission declared that they would not switch from glass containers to other packaging materials if faced with a small but significant non-transitory price increase. The lack of interchangeability of the different packaging materials can be explained, *inter alia*, by the following factors:

Filling technology/equipment

12. Filling technology and equipment restrict both the choice of the packaging material and the possibility to switch from one packaging material to another.

13. The different filling methods are not suitable for all kinds of packaging products. For instance, glass is favoured for hot-fill products, because suitable alternative containers that can withstand the high filling temperatures are, according to the respondents, not available. If the filler was to change the packaging material, he would have to re-consider not only the methods of manufacturing but also how the different filling methods affect the product flavour. Another filling method, which is suitable only for glass packaging, is vacuum filling.

14. The initial investment in the filling equipment and technology dictates to a large extent which packaging containers can be used. Production lines are built to handle specific containers and cannot be changed easily. For instance, different lines are required to package glass bottles, cans and plastic bottles. According to customers it is not possible to run equivalent plastic containers down a line which has been designed for glass containers due to weight difference.

15. Switching from one packaging material to another usually requires significant changes and investment in filling and packaging lines. More specifically, this may involve changing of the filling equipment and moulds; adjusting the speed that containers are handled; and changing the de-pelletiser, labeller and case-packer. In addition, the costs of loss of production during the switch have to be taken into account. According to the

customers the switching time can vary from several months up to 2 years. Therefore, switching from one packaging material to another can take place only when investment in new filling line is justified in a total business context.

Customer preferences and image

16. The consumer market plays an important role in dictating which packaging material is preferred. The form of packaging has marketing implications and is closely connected to the product image and brand identity. The choice of the packaging material may also reflect regional situations and customs.

17. Image questions are important particularly to the spirits industry, where glass is the preferred material. Glass is preferred also in the beverage industry for such premium packaged beverages as some beers and ciders. For spirits fillers the image and perceived quality of glass containers are important and the glass bottle is often considered as an integral part of the product. Glass is also considered to have advantages in terms of presentation, product quality and shelf-life. Some fillers use specific containers which are unique in design and difficult or even impossible to reproduce in some other material.

18. According to the customers, it is difficult to change the consumers' perception of the packaging medium. Switching the packaging material may require re-launching of the product to consumers and new positioning of the product, which would require market research and extensive advertising. In addition, given that switching would require considerable investment, some fillers would even consider withdrawal of some products rather than investing in the product line.

Conclusion

19. The findings stated above lead to the conclusion that the relevant product market is not wider than glass containers.

20. Within this market, one can distinguish three different end use segments: wines and spirits, beverages and food containers. From a demand-side point of view these segments demand separate products which are not substitutable, as the containers are different in size, weight, diameter etc. Most customers therefore considered these segments to be different product markets.

21. The parties, however, argue that the different end use segments do not form separate markets because all manufacturers of glass containers would be able to convert their production facilities between glass containers for different end use segments within a relatively short time and at low cost. The results of the investigation, however, suggest that there are substantial differences between the production technologies used in the production of wide-mouth food containers and narrow-neck bottles which would limit the ability to switch production. Similar differences seem to exist between the production of beverage containers (i.e. beer and soft drink bottles) and wine and spirit containers.

22. However, for the reasons set out below, the Commission does not consider it necessary to further delineate the relevant product markets, as the operation as notified would create competition problems both in a market for all glass containers, and in separate product markets for glass containers for wines and spirits, for beverages,

and for food.

Relevant geographic market

23. According to the parties the relevant geographic market would be wider than the UK, and comprise at least Ireland, and possibly the Benelux-Area, France and Germany.

24. The parties base their arguments on the assertion that transport costs would not be high enough to preclude the UK container manufacturers from competing outside the UK and non-UK manufacturers from competing in the UK; on the argument that in assessing transport costs other costs, such as labour costs and raw materials, should also be taken into account; and on the assertion that glass container manufacturers could satisfy customers' requirements for frequent deliveries and ensure close liaison with the customer whether or not based in the same country.

25. In *IV/M.081 - VIAG/Continental Can* the Commission examined the geographic market for glass containers and concluded that the transport costs and the proximity to customers influence the geographic scope of competition. The Commission took the view that glass bottles have only a small value and take up a great deal of space and, therefore, cannot economically support transport costs over a long distance. On the proximity to customers the Commission concluded that, *inter alia*, the security of deliveries is essential in the choice of a supplier and that there is a need for close customer liaison over modifications of shape, size or decoration of certain products.

26. These findings are supported by the findings of the investigation conducted in the present case. Most customers have their containers supplied locally. Imports form only a small part of the total of the UK glass container market (less than 10%).

27. The small amount of imports can be explained by transport costs. According to third parties, the transport costs from outside the UK could be as high as 10-15% of the final price compared to 1-5% within the UK. The transport cost are considerable also from the island of Ireland (ie the Republic of Ireland and Northern Ireland) to Great Britain (ie England, Wales and Scotland) and vary between 8-12%. Due to the nature of the product, which is usually of low value and high volume, it is thus normally considered uneconomic to source from a long distance.

28. For customers the security of supplies, the elimination of logistical break-downs and the non-interrupted operation of filling lines are important in choosing the supplier. The availability of instant technical support is also essential and sourcing abroad may present untenable risks. Furthermore, glass containers are prone to breakage when transported over long distances and some third parties have been discouraged from sourcing from outside the UK due to poor product and packing quality resulting in higher wastage. Customers find also the ability of the supplier to work closely with them an important feature when choosing the supplier. If the supplier is abroad, this relationship may not be possible.

29. A price comparison submitted by a competitor shows significant price differences between the UK and Germany, Benelux, France, and Italy for beer, carbonated soft drinks and fruit juice bottles which are consistent with the assumption of a separate geographic market. According to this data, the prices in the UK are at minimum 15%

higher than in the other countries. Other third parties have confirmed that the prices for glass containers are higher in the UK than in neighbouring Member States.

30. In view of the above, the Commission cannot accept the parties' submission that the relevant geographic market is wider than the UK and Ireland.

31. The results of the investigation even suggest that the UK and Ireland are not one geographic market, but that the island of Ireland (ie the Republic of Ireland and Northern Ireland) and Great Britain (ie England, Wales and Scotland) constitute separate geographic markets. However, for the reasons set out below, the Commission does not consider it necessary to further delineate the relevant geographic market, as the operation as notified would create competition problems both in a geographic market comprising the UK and Ireland, and in a geographic market comprising only Great Britain.

V. ASSESSMENT

32. The combined market shares as given by the parties (1997 figures) in the glass container market are very high:
- In Great Britain, O-I holds [...][3] of the market and BTR Packaging [...][3]. The combined market share of the parties in Great Britain would be [...][4].
- As for the parties' market shares in the UK and in Ireland, O-I has [...][5] of the market and BTR Packaging [...][5]. The combined market share of the parties would be [...][6].

33. If the market shares are examined by segments, the combined market shares, in the UK and in Ireland, would be the following:
- Wines and spirits: O-I has [...][7] and BTR Packaging [...][8] of the market. The combined market share would be [...][9].
- Beverages: O-I holds [...][10] of the market and BTR Packaging [...][11] The combined market share would be [...][12].

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3 Deleted business secret: between 25% and 35%.

4 Deleted business secret: between 55% and 65%.

5 Deleted business secret: less than 30%.

6 Deleted business secret: less than 60%.

7 Deleted business secret: less than 50%.

8 Deleted business secret: less than 30%.

9 Deleted business secret: less than 80%.

10 Deleted business secret: less than 20%.

11 Deleted business secret: less than 35%.

12 Deleted business secret:between 45% and 55%.

- Food: OI's market share is [...][13] and BTR Packaging [...][14]. The combined market share of the parties would be [...][15].

34. The remaining competitors' market shares for glass containers in the UK and Ireland are as follows: PLM Redfearn [...][16], Beatson Clark [...][17], Lax & Shaw Ltd [...][17], Stolze Flacconage [...][17] and Ardagh [...][17].

35. The market shares presented above indicate that, after the transaction, O-I would be a clear market leader in glass containers, whether assessed at the Great Britain level or at the UK/Ireland level. Its market share would exceed 50% in all segments, with a position far ahead of that of all the other players in the market.

36. The barriers to entry into the glass container market and into all segments are high. No entry has taken place in the last five years. In addition to the cost of acquiring machinery and the increasingly complex glass-making technology, entry is made risky by the fact that the break-even point of a glass factory is close to full capacity. A new entrant is thus obliged to secure contracts for a very high capacity loading prior to actually entering the market.

37. The expected market entry of a glass container plant currently under construction in Northern Ireland does not significantly reduce the parties' strong market position. This plant is still under construction and will not achieve its full capacity for a number of years. Even at full capacity, it would have a market share of less than 10% in the overall glass container market in the UK and Ireland.

38. Most of the customers contacted by the Commission have raised concerns about the parties' potentially high market shares and the operation's adverse effects on competition. They consider that O-I would acquire a dominant position and could increase prices without being constrained by competition. They would also not have any countervailing buying power due to the inability to switch to other materials. These concerns have also been voiced by the Office of Fair Trading and the French DGCCRF.

39. Based on the above, it can be concluded that the operation as notified would threaten to create a dominant position for glass containers as a whole and for the different end use segments in Great Britan, the UK or the UK and Ireland.

VI. MODIFICATIONS TO THE ORIGINAL CONCENTRATION

13 Deleted business secret: less than 30%.

14 Deleted business secret: between 35% and 45%.

15 Deleted business secret: between 65% and 75%.

16 Deleted business secret: between 10% and 20%.

17 Deleted business secret: less than 10%.

40. To remove the competitive concerns raised by the operation, O-I in a letter dated 26 March 1998 has submitted undertakings to the Commission. The text of these undertakings is annexed and forms an integral part of this decision.

41. The undertaking given by O-I to divest the whole of the glass container manufacturing business carried on by BTR Packaging through its subsidiary Rockware Group Limited at its Portland, Knottingley, Wheatley and Worksop plants, and Rockware's 50% interest in a glass recycling joint venture (British Glass Recycling Company Ltd.), which is currently jointly owned by O-I and BTR, (the Divestment Package) will completely eliminate the overlap between the parties in glass containers in the UK and Ireland. Thus, any concern related to the addition of these activities will be removed. O-I would only keep BTR's current 21% share in the Irish glass producer Ardagh which gives them only a non-controlling minority.

42. [...][18].

43. [...][18].

44. The undertakings given by the parties are thus sufficient to remove the competition concerns raised by this operation.

VII. CONCLUSION

45. For the above reasons, and subject to the full compliance with the commitments made by O-I, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

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18 Deleted; business secret: see Annex containing a non-confidential summary version of commitments.

ANNEX

CASE No IV/M.1109 - OWENS-ILLINOIS / BTR PACKAGING

NON-CONFIDENTIAL VERSION OF COMMITMENTS OFFERED TO THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 6(2) OF THE COUNCIL REGULATION (EEC) No. 4064/89

Pursuant to Article 6(2) of Council Regulation (EEC) No 4064/89 (as amended) (the ***Regulation***), Owens-Illinois, Inc. (***O-I***) has offered the commitments summarised below to the Commission of the European Communities with respect to O-I's acquisition of the world-wide packaging business of BTR plc (***BTR Packaging***). These commitments shall take effect on receipt of the Commission's decision declaring O-I's acquisition of BTR Packaging compatible with the common market pursuant to Article 6(1)(b) of the Regulation.

O-I has undertaken to divest the following businesses and interests as a going concern:

(a) the whole of the glass container manufacturing business carried on by Rockware Group Limited (***Rockware***) at its Portland, Knottingley, Wheatley and Worksop plants (the ***Rockware Business***); and

(b) Rockware's 50% interest in British Glass Recycling Company Limited,

(the businesses and interests listed in this paragraphs (a) and (b) being collectively referred to as the ***Divestment Package***).

The sale of the Divestment package will take place within a time period agreed by the Commission and any potential purchaser will require the approval of the Commission.

Any purchaser shall be a viable existing or prospective competitor unconnected to and independent of O-I and possessing the financial resources and proven expertise to maintain and develop the Rockware Business as an active competitive force.

Pending sale, O-I will hold the Divestment Package separate from O-I's other businesses and maintain it as a distinct and saleable business. O-I shall not obtain from the management of the Rockware Business any business secrets, know-how or commercial information of a confidential or proprietary nature relating to the Rockware Business other than in certain circumstances approved by the Commission.

An independent Trustee will be appointed to oversee the ongoing management and operation of the Rockware Business and to make regular reports to the Commission in order to monitor the Divestment Package's continued viability, marketability and competitiveness.

If O-I has not achieved a sale within a specified period, the Trustee will be granted an irrevocable mandate by O-I to achieve the sale of the Divestment Package within the remainder of the time period agreed to by the Commission.