EN

Case No IV/M.1539 - CVC / DANONE / GERRESHEIMER

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 05/07/1999

Also available in the CELEX database
Document No 399M1539

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 05.07.1999

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Madam/Sir,

Subject: Case No IV/M.1539 – CVC/Danone/Gerresheimer
Notification of 2 June 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 2 June 1999 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1] by which the undertaking CVC European Equity II Limited will acquire, through a newly created company (Newco), sole control of the whole of BSN Emballage S.A., which will previously have acquired all subsidiaries of Groupe Danone S.A. producing glass containers for food and beverages (these companies will be referred to collectively as « BSN ») as well as certain container glass operations of Gerresheimer Glas AG (« Gerresheimer Container Glass operations - GCG »).

I. THE PARTIES

2. CVC European Equity II Limited, belonging to the CVC Capital Partners group of companies, provides management and consultancy services to investment funds. BSN and GCG are both manufacturers of glass containers and bottles for food and beverages.

II. THE OPERATION

3. In a first step, BSN Emballage, a subsidiary of Groupe Danone S.A., will acquire sole control of the following subsidiaries of Groupe Danone S.A.: Verdôme, Verreries Mécaniques Champenoises, Vereenigde Glasfabrieken and BSN Vidrio Espana (together : « BSN »). Subsequently, BSN will acquire, through a holding company, the following subsidiaries of Gerresheimer Glas AG: Glashütte Achern GmbH, Bernsdorfer Glas GmbH&Co KG, Bernsdorfer Glas Beteiligungsgesellschaft mbH, Glashütte

1 OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

Budenheim GmbH, Glashütte Gerresheim GmbH, Galshüttenwerke Holzminden GmbH&Co and Gebrüder Stoevesandt AG (together: « Gerresheimer Container Glass operations - GCG »). Finally, Newco will acquire 56% of BSN. CVC European Equity II Limited, on behalf of certain investment funds, will control 75% of the voting rights in Newco on a permanent basis. Groupe Danone S.A. will not retain control in BSN.

III. CONCENTRATION

4. The above operation will result in the acquisition of sole control by CVC European Equity II Limited over BSN and GCG (Article 3(1)(b) of Council Regulation No 4064/89).

IV. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[2] (CVC Capital Partners group - EUR […] billion; BSN - EUR 779 million; GCG - EUR 301 million). Each of these businesses have a Community-wide turnover in excess of EUR 250 million (CVC Capital Partners group – EUR […] billion; BSN – EUR 765 million; GCG - EUR 318 million), 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.

V. COMPETITIVE ASSESSMENT

A. Relevant Product Market

6. BSN and GCG manufacture and sell a variety of glass bottles for beverages, such as wine, spirits, beer, bottled water and soft drinks, as well as glass containers for various food products. The notifying party submits that the relevant product market comprises all "rigid-wall" containers used in the food and beverage industries, including plastic containers, metal cans or cartons, for all end uses in which they compete, even if the different packaging materials' product characteristics and end uses are not exactly identical. The notifying party argues essentially that buyers of packaging materials, i.e. the producers of beverages and food products, have begun to substitute glass packaging for other materials and will increasingly shift from glass packaging towards plastic, cartons and metal cans.

7. In a previous decision concerning beverage packaging, the Commission concluded that it could not accept that there was only one beverage packaging market comprising glass, plastic and cans (M.81 – VIAG/Continental Can). In a subsequent decision concerning beverage and food packaging in the United Kingdom, the Commission found that the relevant product market was not wider than glass containers (M.1109 – Owens Illinois/BTR Packaging).

Overall market trends

---

2 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

8. Overall European market trends do not generally indicate a high degree of substitution of glass containers by other packaging materials. According to data provided by the notifying party, glass bottles are the predominant form of packaging for wine and spirits, without significant changes over time. For beer, market data show a certain decrease in the use of glass bottles and a corresponding increase in the use of metal cans. However, this substitution process is not fast (appr. 10% of the total volume during a period of ten years), and more than 70% of the current European volume and 90% of the French volume continues to be bottled in glass (source: Canadean). Other packaging materials are practically not used for beer. For packaged waters, plastic bottles have practically replaced glass bottles in some countries (e.g. France – glass 6%) whereas in other countries glass is still the preferred packaging material (e.g. Germany – glass over 95%) (source: Canadean). In the soft drinks segment, glass bottles have been replaced to a substantial degree by PET bottles, in particular for carbonated soft drinks (e.g. a shift of appr. 35% Europe-wide for carbonated soft drinks over a period of ten years), whereas the use of metal cans has remained constant (source: Canadean). Finally, in the food segment, the share of glass within the packaging mix has remained stable over the recent years (source: notifying party).

Demand-side substitutability

9. The Commission's market inquiry has confirmed that customers (i.e. producers of beverages and food products) are generally reluctant to substitute glass containers with other packaging materials. Factors restricting such substitution are, firstly, consumer preferences, which have important implications for marketing, product presentation (quality) and product image and, secondly, the customers' existing filling technology and equipment.

10. With respect to wine, champagne and spirits bottles, the customers contacted basically do not consider substituting glass by other packaging materials in the foreseeable future. Consumer preferences in favour of glass and product quality considerations are decisive. There are certain products like champagne for which glass packaging is a prerequisite to obtain the *appelation d'origine controlée*. With respect to beer containers, consumer preferences also seem to limit the use of packaging materials other than glass, notably in France and Germany. With respect to carbonated soft drinks, glass, plastic and metal packaging seem to be more interchangable from the consumer's perspective. Substitutability is probably most limited between glass bottles and metal cans which are largely used for different unit sizes (cans – up to 33 cl, glass bottles – mainly larger). In countries where mineral waters are still predominantly sold in glass bottles, i.e. Germany, customers' replies suggest that substitution by PET bottles may commence but will be slow.

11. In the food segment, only a few products are packaged uniquely in glass containers. Where this is the case (e.g. baby food for under 6 months old), food producers have indicated that they would be reluctant to switch to other materials due to strong consumer preferences. However, a range of food products are alternatively packaged in glass or plastic containers (e.g. dressings, sauces, ketchup, oil etc.) or metal cans (e.g. stewed fruit, vegetables) where consumer preferences seem to be less of an obstacle to the substitution of glass by other packaging materials.

12. Generally, the customers' existing filling technology constitutes a major obstacle to switching from glass to other containers, in particular to metal cans and paper packaging. Only those customers who have already invested in filling lines adapted to alternative packaging materials can be considered able to switch from one material to another without substantial costs and delays. The market investigation suggests that this is the case only for

some large companies (e.g. some soft drinks and food producers). Most producers with simpler filling lines would have to make substantial investments in order to switch to other packaging materials. Producers will consider switching only if there is evidence that consumers have strong preferences for the new packaging material. Even limited cost differences between the packaging material do not seem to be a decisive factor where changing from one material to the other is concerned.

13. On the whole, the above findings suggest that the relevant product market is not more comprehensive than glass containers, although a limited degree of demand-side substitutability for other materials has to be acknowledged in some end use segments (soft drinks, certain food products). Moreover, there is no supply-side substitutability with other packaging materials (plastic, metal, paper). In the end, it is not necessary to reach a definite conclusion because the concentration does not raise serious doubts even if the relevant market is limited to glass containers.

End use segments

14. The Commission has also considered whether the relevant market for glass containers can be subdivided further in line with different end use segments, for instance wine and spirits, other beverages and food products. From a demand-side point of view glass containers for these different segments are not substitutable, as they differ in size, shape, weight etc. From a supply-side perspective, current technology appears to allow switching production between different glass container types of a similar size. However, the Commission does not consider it necessary to further delineate the relevant product market because the distinction between end use segments would not materially alter the competitive assessment.

B. Relevant Geographic Market

15. BSN's production sites are located in France, Spain and the Netherlands. GCG's production sites are located in Germany. Their sales activities overlap in France, the Benelux countries and Germany.

16. The notifying party submits that the relevant geographic market is wider than national and covers an area comprising at least France, the Benelux countries and Germany. The notifying party argues that customers procure glass containers through Europe-wide tendering, and that therefore prices and other conditions of competition are determined on a European scale. Even if competition were found to take place mainly at national or local level, these local supply areas would overlap and, taken together, form a wider reference market.

17. In case IV/M.81 – VIAG/Continental Can the Commission took the view that transport costs and the need to be located in proximity to customers limited the geographic scope of competition. The Commission based its assessment on a reference market comprising the territories of Germany, the Benelux and Northern France.

18. The parties have been unable to substantiate their submission that customers generally procure glass containers through Europe-wide tendering. They have not quantified the number of Europe-wide tenders or of contracts which BSN/GCG actually won as a result of such tenders. According to the Commission's inquiries, major customers tend to solicit offers from suppliers located in several European countries. Some multi-

national companies have created centralised structures for the procurement of products. However, it is less clear whether this regularly leads to international sourcing.

19. Rather, responses to the Commission's market inquiry suggest that glass containers for beverages and food are still largely sourced from local suppliers, i.e. within a radius not exceeding 400-500 km. Large quantities are often produced even closer to the customer's filling site. A limited portion of supplies are shipped from longer distances (in some cases exceeding 1000 km) and/or abroad.

20. The parties estimate transport costs as […]% of the product price for a distance of 400 km and […]% for a distance of 1000 km (depending on the type of container and country). Transport costs per 100 km tend to decrease as distances increase. It has to be recognised that customers do not consider transport costs as the main criterium for the choice of supplier, because prices are normally set through competitive bidding and the transport cost component is therefore not immediately visible to customers (prices "at factory gate"). However, competitors' replies indicate that their competitiveness tends to decrease over longer distances.

21. Most customers quoted on-going service, assistance and security of supply as important criteria for the choice of a glass container supplier. In conjunction with just-in-time delivery requirements, these preferences may also induce customers to choose suppliers which are located not to distant from their filling plant.

22. Imports amount to 7.8% for Germany (source: Fachvereinigung Behälterglasindustrie), 15-20% for France, 30-40% for the Netherlands and 50-70% for Belgium (estimates). Replies to the market inquiry suggest that there is a noticeable amount of regional cross-border trade, in particular from Germany into France, Belgium and the Netherlands.

23. Finally, it should be noted that the majority of customers have indicated their willingness to switch to suppliers abroad if their domestic suppliers raised their prices for glass containers by 5-10% as a permanent price increase.

24. In conclusion, there are some indications that the reference market may be not wider than national with respect to France and Germany. However, neither Belgium nor the Netherlands, nor the two countries taken together, constitute a separate geographic market because high imports and cross-border trade effectively determine the conditions of competition in this area. It can also not be excluded that the conditions of competition are sufficiently homogenous in a wider transborder area comprising France, the Benelux countries and Germany. In the end, the precise market definition can be left open because the competitive assessment does not change under the alternative market definitions.

C. Assessment

Market shares

25. The Commission estimates the parties' and their main competitors' shares in the market for glass containers for food and beverages as follows (based on volumes sold in 1997/1998)[3]:

Producers	France	Germany	Northern Continental Europe (France, Germany, Benelux)
BSN	[35-45]%	[0-10]%	[20-30]%
GCG	[0-10]%	[15-25]%	[5-15]%
Saint Gobain	[35-45]%	[20-30]%	[25-35]%
Heye-Glas	[0-10]%	[5-15]%	[0-10]%
PLM		[0-10]%	[0-10]%
Nienburger		[10-20]%	[0-10]%
Wiegand		[0-10]%	[0-10]%
Lüner		[0-10]%	
Others	[10-20]%	[5-15]%	[10-20]%

26. With respect to individual end use segments, BSN's and GCG's combined market shares would be considerable in the segment for beer bottles in France (appr. [50-60]%) or Northern Continental Europe (appr. [40-50]%) and in the segment for food containers in France (appr. [50-60]%).

Single Dominance

27. It appears unlikely that the combination of BSN and GCG will lead to single market dominance under any alternative market definition. When considering the overall product market for glass containers, BSN's and GCG's combined market share will not exceed [40-50]% in any of the alternative geographic markets, with other strong competitors being present, in particular Saint Gobain.

28. Even if individual end use segments were to be considered as separate product markets, it cannot be expected that BSN's and GCG's combined market position would create or strengthen a single dominant position as a result of which effective competition would be impeded. With respect to the beer bottle segment in France, it has to be noted that the market share figure of [50-60]% includes sales which have been captive to date, i.e. BSN's sales to Brasseries Kronenbourg, a Danone subsidiary which hitherto belonged to the same group. These sales amounted to […] Ktons in 1998, compared to BSN's total sales of beer bottles in France of […] Ktons, and represented appr. […] of this segment. The present operation may weaken BSN's competitive position in the medium term, because its vertical links with Kronenbourg will be loosened over time (see below).

3 Estimates based on data provided in the notification and by competitors.

29. In France, GCG's incremental market share of [0-10]% in the beer bottle segment and appr. [0-10]% in the food container segment consists exclusively of imports from Germany. Given that customers appear to be willing to contemplate sourcing from abroad (see above), it can be assumed that alternative suppliers in Germany or other countries (e.g. Italy, Spain) can compensate for the elimination of competition by GCG. This has been confirmed by German competitors who already supply French customers, partly over distances exceeding 1000 km, and who have indicated that such exports are facilitated by higher price levels in France. On a Northern Continental European scale, the parties' position in the beer bottle segment can also be restrained by existing competition.

30. Finally, replies from competitors suggest that they are able to switch their production between different container types of roughly the same size without major difficulty. This will enhance their ability to present effective competition in those end use segments in which the parties currently enjoy a strong position.

Collective dominance

31. The Commission has considered whether the combined entity (BSN and GCG), together with its main competitor Saint Gobain, will be in a position to exercise collective dominance, given that their combined market share exceeds [75-85]% if France is considered as reference market, and approaches [65-75]% in Northern Continental Europe.

32. The Commission's inquiries have not revealed that price transparency or other elements constituting market transparency exist in the glass container market to a degree that would favour anti-competitive parallel behaviour. Such transparency has been considered a key element in assessing the possibility of collective dominance in similar markets (cf. Commission Decision of 21 December 1993, IV/M.358 – Pilkington-Techint/SIV).

33. Firstly, price lists are not commonly used by glass container producers. Instead, most customers indicated that prices are set through competitive tendering, i.e. customers seek competing offers from container producers for individual consignments according to varying specifications. This tends to confirm the notifying party's submission that [a large majority] of BSN's and GCG's sales (in volume and value) are made on the basis of competitive tenders. In addition, contractual prices are re-negotiated periodically, often annually. Also, the product (glass containers), although made of one basic material only (glass), is often not sufficiently homogenous to create price transparency. Many customers require detailed specifications as to the shape, design, colour, weight etc. of a glass container. Each of these specifications introduce price variables.

34. Secondly, according to the notifying party and Saint Gobain, no technological links, cross-supply links or other links which would create market transparency exist between the combined entity and Saint Gobain.

35. Moreover, it can be assumed that customers are able to exercise sufficient buyer power. According to the notifying party, multi-national customers (i.e. multi-national food and beverage producers) account, for instance, for 85% of BSN's sales. Such customers can exercise considerable leverage, as evidenced by the fact that the customers contacted by the Commission commonly shift significant quantities of their glass container supply between suppliers from year to year. The Commission notes in

particular that none of the customers contacted has raised any substantiated concerns about the operation's impact.

36. As indicated above, the majority of customers' replies indicated that they procure glass containers through competitive tendering. Supply contracts are often of a short duration (up to three years). Quantities and prices are often (re)negotiated annually. Most customers considered that they were able to switch to other suppliers without difficulty and at short notice. Technically, a switch to another supplier seems to be possible within 1-3 months even where specific container shapes are required. Most customers have diversified their sources of supply. Larger customers also monitor their suppliers' costs and other pricing parameters. All these factors enhance the customers' buyer power.

37. Finally, there is not enough evidence to suggest that the notified operation will change the market conditions in such a way as to raise concerns about collective dominance by the combined entity (BSN and GCG) and Saint Gobain and, as a result, significantly impede effective competition in a market comprising either France of Northern Continental Europe.

38. If the reference market is considered to comprise *Northern Continental Europe* (France, Germany and the Benelux countries), the combined market share of BSN/GCG and Saint Gobain will not exceed [60-70]% and will possibly be lower, leaving a significant part of the market in the hands of other competitors. Although barriers to entry are high, notably because of the capital investment required, competition by existing suppliers would still seem sufficient to restrain the two leading suppliers. A number of regional suppliers continue to hold market shares of [0-10]% (e.g. Heye-Glas, PLM, Nienburger Glas, Bayerische Flaschen-Glashüttenwerke Wiegand) and a further [10-20]% of the market is held by local suppliers. There are indications that supply from Spanish glass container producers is also competitive.

39. If the market were limited to *France*, the operation's impact will be more limited because it will change the market structure to a lesser degree. As indicated above (paragraph 29) GCG's sales consist exclusively of imports amounting to not more than [0-10]% of the glass container market. Taking into account the fact that most customers contacted have indicated that they would seek supply from abroad if their local suppliers raised prices by 5-10% on a permanent basis, it is likely that existing or potential competition by other importers (e.g. in Germany, Italy or Spain) can compensate for the elimination of competition by GCG (see paragraph 29).

40. In conclusion, the evidence available does not raise serious doubts that the notified concentration will create or strengthen a single or collective dominant position as a result of which effective competition will be significantly impeded.

VI. ANCILLARY RESTRICTIONS

41. The notifying party has requested the Commission to assess a number of agreements as being ancillary to the concentration. The notifying party has identified a non-compete provision, under which Groupe Danone and Newco undertake that […], they will not compete, directly or indirectly, […], nor take any participation other than a portfolio participation of less than […], in any entity which produces, distributes, supplies or sells glass containers and bottles for the food and beverage glass packaging industry in the Territory. This provision is necessary to guarantee to CVC European Equity II Limited the full value of the assets transferred by Danone and, insofar as it has effects in the Community, can be considered as directly related and necessary to the implementation of the concentration.

42. […]

43. Finally, the parties have identified a clause (Article 13.1) in the Sale and Purchase Agreement between a vehicle company solely controlled by BSN and Gerresheimer Glas AG under which Gerresheimer agrees not to compete, directly or indirectly, […], with respect to food and beverage glass packaging products, nor take any participation exceeding […] in any entity which produces, distributes, supplies or sells such products. As far as this non-compete clause relates to the glass container business transferred by Gerresheimer, it is necessary to transfer the full value of this business and, insofar as it has effects in the Community, it can be considered as directly related and necessary to the implementation of the concentration.

VII. CONCLUSION

44. For the above reasons, 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,