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***Case No COMP/M.3397 - OWENS-ILLINOIS / BSN GLASSPACK***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89**
**MERGER PROCEDURE**

Article 6(2) NON-OPPOSITION
Date: 09/06/2004

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

Dear Sir/Madam,

**Subject: Case No COMP/M.3397 – Owens-Illinois/BSN Glasspack**
**Notification of 22.4.2004 pursuant to Article 4 of Council Regulation No 4064/89**[1]

1. On 22.4.2004, the Commission received a notification of a proposed concentration by which Owens-Illinois Inc. ("O-I") will acquire sole control over BSN Glasspack S.A. ("BSN") by way of purchase of shares.

2. In the course of the proceedings, the parties to the concentration submitted undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the Merger Regulation. After examination of the notification and in the light of these modifications, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

## I. THE PARTIES

3. **Owens-Illinois** is a US-based international manufacturer and seller of glass containers, glass container moulds and machinery for manufacturing glass containers, and plastic containers and associated equipment. In the EEA, Owens-Illinois has glass manufacturing operations in Finland, Italy, Spain and the United Kingdom. Its plastic packaging manufacturing business is in the EEA located in Finland, the Netherlands and the United Kingdom.

[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).

4. **BSN** is based in France. It manufactures and sells glass containers for beverages and food. BSN has production facilities in France, […], Germany, the Netherlands and Spain. BSN licences machinery to manufacture glass containers from Owens-Illinois for some of its machines. BSN is not active in plastic packaging manufacturing.

## II. THE OPERATION

5. Pursuant to the Share Purchase Agreement, dated March 16, 2004, Owens-Illinois Newco will acquire 100% of the share capital and voting securities of BSN Glasspack. At closing, Owens-Illinois will acquire sole control over BSN Glasspack.

## III. CONCENTRATION

6. Following from the above, it can be concluded that the operation constitutes a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

## IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (O-I EUR 6.03 billion, BSN EUR 1.22 billion)[2]. Each of the parties has a Community-wide turnover in excess of EUR 250 million (O-I EUR […], BSN EUR […], 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: THE OPERATION AS NOTIFIED

<u>*Overview*</u>

8. Both O-I and BSN manufacture packaging containers. O-I produces both glass and plastic containers while BSN makes only glass containers. They both supply these containers to customers, who fill them with food or beverages for sale to ultimate consumers. The parties only have overlapping manufacturing sites in Spain, but their sales overlap in a number of EEA countries.

### a) The relevant product market

9. The parties' activities overlap with regard to the production of glass packaging. The parties manufacture and sell a wide variety of glass containers for beverages such as wine and spirits, beer and non-alcoholic beverages (*e.g.*, mineral water and soft drinks), and food. Contrary to other food containers, such as e.g. plastic, glass containers are supplied to the customer as a final product (rather than a pre-form that is finalised on the customer's premises). As a result, a relatively bulky product must be shipped from the manufacturing plant to the customer location.

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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.

10. The parties have submitted that all “rigid-walled” containers, such as plastic containers, metal cans, glass and carton, all comprise one relevant product market. According to the parties, there is sufficient competition between containers made from glass and other types of packaging materials. They have argued that due to improved technology, other materials have acquired characteristics equal to glass, e.g., in terms of heat resistance. They have also submitted that many machines used by fillers/packers, which fill the packaging with food or beverage products, can handle both glass and plastic.

11. In previous decisions examining rigid-walled packaging, the Commission concluded that there is a separate market for glass packaging[3]. Furthermore, in its latest decision from 1999 in CVC/Danone/Gerresheimer, the Commission did not exclude that the relevant product market may potentially be further segmented by reference to end-use (i.e., wine and sprits, other beverages, and food).

12. The investigation has confirmed the findings in previous cases in the glass packaging industry that glass packaging constitutes a separate relevant product market from other packaging materials, and in particular from plastic containers and metal cans.

13. Although there may be competitive interaction between different packaging materials in certain product segments, cross-price elasticity is likely to be higher between two glass producers than between glass producers and producers of other packaging materials. The market investigation has confirmed that customers’ choice of packaging material is primarily made according to the product for which the packaging is used, desired brand image etc. A small (5-10%) increase in relative prices from a competitive level would, thus, not materially affect the preference for a given packaging material.

14. Third parties in their replies have indicated that a switch from glass to another packaging material would require considerable changes to the production and filling lines and would incur substantial costs and time delays. Furthermore, the investigation also shows that in most cases changes in the packaging material would be driven by consumer preferences, as opposed to the cost of the containers, and would require considerable marketing efforts in order to re-launch and re-position the product.

15. With regard to the question whether separate sub-markets (wine & spirits, other beverages, food) within the glass container market should be defined, the investigation shows that there is a high level of supply side substitution between the different types of glass containers. However, the exact market definition can be left open in this case because, as initially notified, the concentration would have raised serious doubts as to its compatibility with the Common Market already under a wider product market definition comprising the overall market for glass packaging containers. The commitments solve the problems both under the wider and narrower market definition.[4]

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[3] Case No. IV/M.1109 - Owens-Illions/BTR packaging; Case No. IV/M.1539 - CVC/Danone/Gerresheimer

[4] In the NE Spain/ SW France area (see geographic market definition below), the undertaking by the parties (see paragraph 42-47 below) eliminates entirely the competitive overlap, restoring the pre-merger situation. In N Italy/ SE France, the divested Corsico plant has a flexible machine configuration which can allocate its production capacity to any of the potential sub-markets identified above.

16. Therefore, and in line with the findings in previous cases, glass packaging can be considered to constitute the relevant product market for the purposes of this market investigation.

**b) The relevant geographic markets**

17. The parties submit that the majority of relevant geographic markets in Europe should be defined as Member State-wide because a significant majority of glass containers are shipped to locations within 500 km of where they are produced. The parties have further submitted that there is also evidence of substantial cross-border trade among France, Benelux and Germany, supporting a Northern Continental European Market. According to the parties, cross-border trade establishes that the competitive constraints imposed on container manufacturers are not limited to competition from rivals with plants in the same country, but also extend to cross-border suppliers.

18. In previous decisions the Commission held that there were indications that the geographic market for glass containers is not wider than national. However, in its most recent decision in this sector, IV/M.1539 - CVC/Danone/Gerresheimer, the Commission also found that the existence of a Northern Continental European market for glass containers encompassing France, Germany and the Benelux countries could not be excluded[5].

19. The market investigation in the present case confirms that transportation costs constitute the primary barrier for glass container manufacturers to distribute their products over a wider geographic area. In IV/M.1539 - CVC/Danone/Gerresheimer, the maximum economic supply distance was estimated at 400-500km around a production plant. The results of the present investigation largely support this finding, although customers' and competitors' estimated economic supply distance tended towards the lower end of this range (300-400km). What is considered by a manufacturer as an economic supply distance is also influenced by specific circumstances, such as local transport infrastructure, volume of the contract, capacity utilisation, prevailing market prices etc.

20. O-I and BSN's plant networks are largely complementary on a national basis. The only country where both parties have production plants is Spain. However, the parties' sales activities overlap in a number of countries, most importantly in France, Italy, the Benelux, Germany and the United Kingdom.

21. For the present case, the exact market definition concerning the Benelux, Germany and the United Kingdom can be left open because in all alternative market definitions considered, competition concerns would not arise in any of these countries. In the following, the competitive conditions in Spain, Italy and France will be examined in more detail.

22. With regard to Spain, both parties have production plants in Barcelona. Barcelona is located 145 km from the French border. The investigation shows that there are exports from Northern Spain to South Western and Southern France. In 2003, the O-I Barcelona plant exported […] of its total production into France. From the BSN Barcelona plant, around […] of the total production was exported into France.

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5 Case No. IV/M.1539 CVC/Danone/Gerresheimer at para. 24.

23. As concerns Italy, O-I has 14 plants in Italy. Eight of these are located in Northern Italy. BSN has no manufacturing capacity in Italy but it has 5 plants in the Southern part of France. The investigation shows that there are exports from Italy to Southern and Eastern France. For example, in 2003, the O-I plant in Asti exported […] tonnes into France, which corresponds to […] of the total production of that plant. From the two O-I plants located in Milan, […] tonnes were exported into France. This corresponds to […] of the total production of these plants. According to the market investigation, exports by independent Italian manufacturers into France are minimal.

24. Hence, the import/ export data for Italy, France and Spain is consistent with the finding that geographic markets are determined primarily by transportation costs and that the resulting catchment areas served by individual plants extend across national borders.

25. The market investigation indicates, in addition, that suppliers can price discriminate between individual customers as contracts are negotiated bilaterally and prices depend significantly on individual product specifications. Accordingly, all customers located in the catchment areas of a given set of supplier plants form a separate relevant geographic market in which competitive conditions are reasonably homogenous (and distinguishable from outside areas).[6]

26. An analysis of the parties' European plant networks shows significant competitive overlap in two regional markets, (i) Barcelona/ South-Western France and (ii) Northern Italy/ South-Eastern France. Customers in these areas face a reasonably homogenous set of suppliers and the notified transaction will have a significant impact on these customers.

Conclusion

27. Therefore, for purposes of this decision, the Barcelona/ South-Western France region on the one hand, and Northern Italy/ South-Eastern France on the other hand are considered to constitute separate relevant geographic markets for purposes of the present market investigation. For all other areas the exact geographic market definition can left open because no competition concerns arise under any possible market definition.

**c) Assessment**

28. The Commission's market investigation indicates that the proposed transaction raises serious doubts as to its compatibility with the Common Market in the overall market for glass containers in Barcelona/ South-Western France region and in Northern Italy/ South-Eastern France.

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6 As suppliers can adjust their transaction price to the competitive conditions faced by each individual customer, a given supplier plant may charge different prices to different customers within its catchment area. The "overlapping circles" concept referred to in the Commission's Notice on market definition, therefore, does not apply. For example, a BSN plant in the south of France may find that customer A located toward the west of its catchment area has only St. Gobain as a potential alternative (which, for the sake of argument, operates at high levels of capacity utilisation). However, customer B located East of the BSN plant, has the additional option of purchasing its glass bottles from O-I's plants in Asti or Milan. BSN, therefore, must take the additional competitor into account in its pricing to customer B, but not to A. Transportation costs prevent arbitrage in this case, which could otherwise defeat a price discrimination strategy.

29. In their notification, the parties submitted the following national market share estimates for O-I, BSN and the main competitors in those countries where both parties sell glass containers:

**Glass Containers: market shares 2003, by volume**

| **Producers** | **France %** | **Germany %** | **Benelux %** | **Italy %** | **Spain %** | **United Kingdom %** |
|---|---|---|---|---|---|---|
| Owens-Illinois* | [0-10] | [0-5] | [0-5] | **[35-45]** | **[0-10]** | **[15-25]** |
| BSN Glasspack* | **[40-50]** | **[10-20]** | **[45-55]** | [0-5] | **[10-20]** | [0-5] |
| **Combined** | **[45-55]** | **[15-25]** | **[45-55]** | **[40-50]** | **[20-30]** | **[20-30]** |
| St Gobain | [35-45] | [20-30] | [5-15] | [25-35] | [30-40] | -- |
| Rexam | [0-5] | [20-30] | [15-25] | -- | -- | [10-20] |
| Ardagh | [0-5] | [5-15] | [0-10] | [0-5] | -- | [25-35] |
| Wiegand | [0-5] | [10-15] | | | | |
| Vidrala | [0-5] | -- | -- | -- | [10-20] | -- |
| Barbosa & Almeida | -- | -- | -- | -- | [10-20] | -- |

*Market shares in bold indicate an O-I/ BSN Glasspack plant location.
Source : parties' estimates based on Fédération Européenne de Verre ("FEVE") figures

30. According to the parties' market share data, the transaction will lead to combined national market shares in excess of [35-45%] in France, the Benelux and Italy. However, because the parties' plant networks are complementary, the market share addition is relatively low on a national basis. Given the relatively short distances over which glass containers can be economically supplied (approx. 300-400 km), the main competitive effects occur where the catchment areas of the merging parties' plants overlap. These catchment areas extend across national borders.

*Benelux*

31. In the Benelux area, in addition to the small market share accretion [0-5%], O-I [45-55%] and BSN [0-5%] will post-merger continue to face a number of strong competitors including Rexam [15-25%] and Saint-Gobain [5-15%] as well as other competitors, such as Wiegand and Ardagh who supply from their German plants.

*Germany, United Kingdom*

32. Likewise, in Germany and United Kingdom, several strong competitors are active in the market and the parties' market share is more limited. The major players like Saint-Gobain [20-30%], Rexam [20-30%],[7] Weigand [5-15]%], and Ardagh [5-15]%] in Germany and Ardagh [25-35%], Rexam [10-20%], Allied Glass [5-15%], Beatson [5-15%], and Quinn [0-10%] in the United Kingdom will each provide substantial competition to the merged entity, which will have a [15-25%] and [20-30%] combined market share, respectively, post-merger.

*France, Italy*

7 The market share for Rexam for Germany includes the market share of Lüner, which Rexam acquired on February 18, 2003, and of Nienburger, which Rexam acquired on November 29, 2002.

33. In France, BSN is the leading glass container manufacturer, with only one sizeable competitor with domestic production plants, St. Gobain. In Italy, O-I is the market leader by a wide margin ahead of St.Gobain. However, although their respective national market shares are low, O-I's Northern Italian plants act as a strong and credible competitor for French customers located within these plants' economic supply distance. Conversely, BSN supplies significant quantities and acts as a credible competitor for customers in Northern Italy. The notified operation will, therefore, have a significant competitive impact on customers in the South-Eastern France/ Northern Italy area, where the parties plant catchment areas overlap and who already today face a concentrated market with only three major suppliers (O-I, BSN and St. Gobain). These customers will see the number of credible glass container suppliers fall from three to two, with O-I/ BSN holding a potentially dominant market share.

34. There are no readily available market share statistics for the regional market affected by the notified transaction. The Commission has therefore estimated the approximate plant capacity located within 300-400 km to either side of the French-Italian border, which is best placed to supply this set of customers. As the table below indicates, the parties would post-merger control more than half of the available glass-container production capacity in the market under consideration.

| | **Capacity (tons)** | **Share (%)** |
|---|---|---|
| **BSN […]** | […] | […] |
| **O-I […]** | […] | […] |
| **Merging parties[…]** | **[…]** | **>50%** |
| **Saint Gobain** | […} | […] |
| **Others** | […] | […] |
| **Regional total** | 1,549,913 | 100 |

Source: Form CO and Commission's market investigation

35. There are a number of independent glass container producers in the area, all of them located in Italy. However, most of the independent Italian glass container producers are significantly smaller than O-I, BSN and St Gobain. Most of them also specialise in specific glass containers for high quality products and do, thus, not act as direct competitors in the bulk market. Others, including Zignago and Vetreria Piegarese are considered by customers as potential alternative suppliers, but they serve mostly customers in the neighbourhood of their respective plants and do not export to France. Concerning the Italian exports to France, customers covered by the market investigation specifically mentioned AVIR, an O-I subsidiary, as a manufacturer that has in recent years become a credible alternative supplier in South-Eastern France, exercising competitive pressure on Saint Gobain and BSN. This alternative would disappear after the merger.

*Barcelona/ NE Spain*

36. In the Barcelona region and South-Western France, within 300-400 kilometres from Barcelona, the new entity would account for a total of […] tons of production capacity while St. Gobain plants in the region account for [confidential] tons. Moreover, both O-I and BSN (as well as St. Gobain) operate plants in Barcelona. These plants constitute, therefore, particularly close substitutes from a geographic point of view. The parties' combined capacity in the Barcelona area would amount to […] tons post transaction (O-I […] tons, BSN […] tons), while Saint Gobain's capacity would amount to [confidential] tons. Including, additionally, the […] plant (see below), O-I/

BSN would, thus, control approximately [>50]% of the available glass container production capacity in the Barcelona/ South-Western France region. In the Barcelona/ Catalunya area, the parties combined share of capacity amounts to […]%.

37. A number of local suppliers operate in these areas but they either do not produce the same types of glass containers or they are too small to be feasible alternative suppliers to the large plants. By way of example, […] specialises in glass containers for food and cosmetics, and produces a limited quantity of spirit bottles. It does not compete on the market for wine, beer or other beverage bottles. […]. The market investigation also revealed that some customers in this region are able to purchase some quantities from plants in Portugal and Western Spain, due to the overcapacity in that area and the relatively low transport costs within Spain. However, the volumes transported are not sufficient to place a significant competitive constraint on the pricing behaviour of plants in the Barcelona area, particularly for customers in France, where very few imports come from Portugal.

38. The Commission's market investigation indicates, therefore, that the independent producers in these regions would be unable to offset the negative competition effects which the concentration will bring about.

Conclusion

39. Third parties, and particularly customers of all sizes, have expressed serious concerns about the transaction in the Barcelona/ South-Western France and Northern Italy/ South-Eastern France regions. They are concerned that prices will rise and that the rationalisation of the parties' plant network will lead to a reduction in capacity and plant output.

40. Further, the Commission's market investigation, in line with the data supplied in the notification, found that glass container plants operate at high levels of capacity utilisation (typically in excess of 90%). Barriers-to-entry, especially at the furnace level, are high because of the high sunk costs of entry and high capacity utilisation required to break even. It therefore appears unlikely that any of the smaller competitors or, indeed, St. Gobain would offset any post-merger output reduction (and consequent price increases) by the parties.

41. Given the parties' very high combined market shares, the removal of an important competitor in an already highly concentrated market resulting from the transaction and the existence of significant barriers-to-entry, the operation as notified, hence, raises serious doubts as to its compatibility with the Common Market in the two regional markets defined above (Barcelona/ South-Western France and Northern Italy/ South-Eastern France).

## VI. MODIFICATION TO THE ORIGINAL CONCENTRATION

42. In order to remove the serious doubts raised by the proposed concentration the parties have submitted Undertakings pursuant to Article 6(2) of the Merger Regulation, which are intended to remove the competitive concerns identified above. The Undertakings are attached to this decision and form an integral part thereof.

43. In order to address the competition concerns raised by the Commission, the parties undertake to divest BSN's plant in Barcelona, Spain, and O-I's Corsico plant in Milan, Italy, including all the necessary tangible and intangible assets to a viable purchaser

able to act as an effective competitor to O-I/ BSN. In particular, as both BSN Glasspack's Barcelona plant and Owens-Illinois' Corsico plant are equipped with Owens-Illinois machines and are licensees of Owens-Illinois technology, an irrevocable licence for this technology is included in the undertaking.

44. The undertaking removes entirely the overlap of the parties' operations in the Spain/ SW France region. It, thus, restores the market structure prevailing pre-merger.

45. In Northern Italy/ South-Eastern France, divestiture of the Corsico plant to a competitor not presently active in the area will compensate for the disappearance of O-I and BSN as independent competitors for customers located in this regional market, thus restoring the number of potential suppliers to the pre-merger situation. The Corsico plant has an annual production capacity of […] tons. Its production equipment is suitable for a wide variety of drinks and food containers. The plant's capacity is approximately equivalent to O-I's entire exports into France or more than twice the tonnage imported into Italy by BSN.

46. The Commission, therefore, concludes that the undertaking submitted by the parties restores the competitive conditions prevailing pre-merger in the regional markets comprising Barcelona/ South-Western France and Northern Italy/ South-Eastern France.

47. In order to ensure that O-I complies with these undertakings, the Commission attaches conditions and obligations to this decision. The undertakings set out in sections B through F (except paragraphs 26 and 27) of the commitments annexed to the present decision constitute conditions, since only by fulfilling them may the structural change on the relevant markets be achieved. The other undertakings constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended.

## VII. CONCLUSION

48. 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, subject to the condition of full compliance with sections B through F (except paragraphs 26 and 27) of the commitments annexed to the present decision and to the obligation of full compliance with the other sections of the said commitments. This decision is adopted in application of Article 6.2 of Council Regulation (EEC) No 4064/89 and of Article 57 of the EEA Agreement.

For the Commission, signed
Mario MONTI
Member of the Commission