

***Case No COMP/M.4590 -
REWE / DELVITA***

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/04/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25/04/2007

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

Subject: Case No. COMP/M.4590 – REWE / DELVITA
Notification of 16/03/2007 pursuant to Article 4 of Council Regulation (EC) No. 139/2004¹
Publication in the Official Journal of the European Union No. C072, 29/03/2007, p. 51

I. INTRODUCTION

1. On 16 March 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the Merger Regulation) by which the undertaking Euro-Billa Holding AG ("Euro-Billa", Germany), belonging to the REWE group ("REWE", Germany), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Delvita a.s. ("Delvita", Czech Republic) by way of purchase of shares.

II. THE PARTIES AND THE CONCENTRATION WITH A COMMUNITY DIMENSION

2. REWE is a German-based group active in food and non-food wholesale and retail, travel and tourism in a number of European countries. In the Czech Republic, REWE owns and operates, via the holding company REWE Beteiligungs Holding International GmbH, 229 stores through its wholly owned subsidiaries Euro-Billa and Penny Market. Euro-Billa and

¹ OJ L 24, 29.1.2004 p. 1

Penny Market operate outlets under the brand names Billa (supermarket chain, 81 stores) and Penny (discount chain, 148 stores). REWE entered the Czech market with the acquisition of the whole of Billa then already active in the Czech market and with its Penny chain both in 1996.

3. Delvita is a Czech subsidiary of Delhaize "The Lion" Nederland BV, which is a subsidiary of the Delhaize group. Delhaize is an international group primarily active in food retailing. Delhaize group also engages in food wholesaling and non-food retailing of products such as pet products and health and beauty products. Delhaize group is active in North America, Europe and Southeast Asia.
4. Delvita is active in retail food and non-food business and operates 97 supermarkets and grocery stores in the Czech Republic under the names "Delvita", "Delvita City", "Proxy" and "Sama". Delvita is not active outside the Czech Republic.
5. The concentration is part of REWE's internationalisation strategy and is furthermore intended to improve the coverage of REWE's network of supermarkets in the Czech Republic.
6. On 10 November 2006, Euro-Billa entered into a Share Purchase Agreement with Delhaize "The Lion" Nederland BV and Delhaize group to acquire 100 % of the share capital of Delvita. Leading to the acquisition of sole control the transaction therefore constitutes a concentration within the meaning of Art. 3(1)(b) of the Merger Regulation.
7. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion (REWE: EUR 35.54 billion; Delvita: EUR -- billion). The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million (REWE: EUR -- million; Delvita: EUR -- million) for 2005. While Delvita achieves the totality of its Community-wide turnover in the Czech Republic, REWE achieves more than two thirds of its Community wide turnover in Germany. The notified transaction therefore has a Community dimension.

III. ASSESSMENT

8. Both REWE and Delvita are active in the retail sale of daily consumer goods in the Czech Republic.

1. Product market

Retail market for daily consumer goods

9. The parties have chosen to retain as the relevant product market the retail market for daily consumer goods limited to modern distribution channels (supermarkets, hypermarkets and discounters).
10. However, the parties have argued that the retail of daily consumer goods includes so-called near-food goods for daily consumption such as toiletries and cosmetics, detergents, cleaning agents and products in the relevant product market ("grocery sales"). Genuine non-food goods such as textiles, tools, toys and household appliances and the like (hereinafter "non-grocery sales") should not be included since they are not purchased on a daily or otherwise recurrent basis, but in longer intervals.

11. In the end, the parties consider that it can be left open whether non-grocery sales have to be included in the relevant product market or not. Compared with its competitors, both REWE and Delvita have only limited amounts of non-grocery sales, whereas Ahold, Tesco, Globus and others have a wider and deeper non-food assortment. The parties submit that if one included all non-food sales into an all store sales product basket, the combined market share of REWE/Delvita would automatically decrease and the market shares of the major competitors would automatically increase.
12. The Commission has in previous cases considered that there is a separate product market for the retail of daily consumer goods mainly carried out by retail outlets such as supermarkets, hypermarkets and discount chains². Previous decisions argue that these retailers are active in different markets than other retailers such as specialised outlets, service stations and others³. This product market definition has previously been confirmed as concerns the Czech Republic.⁴
13. The market investigation in this case confirmed that the retail market for daily consumer goods through modern distribution channels should be considered as the relevant product market for the purpose of this transaction. According to the parties' competitors, the modern distribution channels compete only to some extent with other shop formats, while hypermarkets, supermarkets and discounters compete with each other fully or at least for most products.
14. The market investigation has further shown that the parties' competitors mostly agree with the parties' argument that the retail market of daily consumer goods would include so called near-food goods ("grocery sales") but not so called genuine non-food goods ("non-grocery sales"). According to the market investigation, hypermarkets seem to offer a wider non-food product range than supermarkets and discounters. Despite this difference in the product range all three formats are considered as competing with each other and being part of the same product market. Therefore, hypermarkets seem to compete with their full product range and not only to the extent that they sell food and near-food goods.⁵ However, the question if non-grocery sales are to be included in the relevant product market can, ultimately, be left open since under all alternative definitions considered, effective competition is not significantly impeded.

Procurement

15. The Commission has in previous cases considered that the market for the procurement of daily consumer goods comprises the sale of these goods to customers such as wholesalers, retailers and other firms. Given the limited supply-side substitutability of producers, the Commission has in previous decisions found that the procurement market for daily consumer goods has to be defined with reference to different product groups.⁶ The parties suggested a

² Whether discounters are to be included in the product market was left open in COMP/M.1684-Carrefour/Promodes par. 12 and COMP/M.1221-Rewe/Meinl par. 17. In case COMP/M. 3905 Tesco/Carrefour the market investigation confirmed that with regard to the pricing policy hypermarkets seem to be closer to discount stores than supermarkets, par.12.

³ E.g. Commission's decisions in cases IV/M.784 Kesko/Tuko par. 19, 20; COMP/M.1221-Rewe/Meinl par. 12, 16; COMP/M.1684-Carrefour/Promodes par. 9 and M.3646 Kesko/ICA/JV par.10 et seq in which the product market definition was left open.

⁴ COMP/M.3905 Tesco/Carrefour, par. 11.

⁵ COMP/M.3905 – Tesco/Carrefour, par. 17.

⁶ COMP IV/M.784 – Kesko/Tuko, par. 33; COMP/M.1221 – REWE/Meinl, par. 75.

break-down of the Czech procurement market into the following product categories: bread, cakes and pastries; dairy products; non-alcoholic beverages; hot beverages; confectionary goods; staple foods; baby food; pet food; toiletries and cosmetics; detergents, cleaning agents and products. For the purpose of this decision, the exact definition of the procurement market for daily consumer goods can be left open as under neither alternative definition would effective competition be significantly impeded.

2. Geographic market

Retail market for daily consumer goods

16. In the absence of other statistical tools at hand, the parties have delineated the local markets at the level of the Local Administrative Units 1 (LAU 1, in the past: NUTS 4), which correspond to 77 subdivisions of the Czech territory (the number of inhabitants in one subdivision is, roughly speaking, about 100,000 to 200,000). The parties submit that LAU 1 are, in most cases, equalling catchments' areas of about 20-30 km around the respective outlets which are, in most cases located in the geographical centres of the LAU 1.
17. Moreover, the parties argue that they offer a nationwide identical assortment of products, address marketing activities to a nationwide audience and pursue an investment and pricing strategy at national level. To the parties' knowledge, other main stakeholders in the Czech market (Metro, Ahold, Schwarz, Tesco, Lidl, Tengelmann, Globus etc.) do not operate the market significantly differently, but compete with REWE/Delvita by means of strategies and competitive measures at national level. The parties submit that the Czech Office for Protection of Economic Competition defined the product market for retail sale of daily consumer goods to be national in scope in the case Ahold/Julius Meinl of 2 September 2005.
18. In previous Commission cases the geographic market for the retail sale of daily consumer goods has been delineated, according to demand side arguments, by the boundaries of a territory where the outlets can be reached easily by consumers (radius of approximately 20 to 30 minutes driving time)⁷. This territory may also be larger (e.g. regional or national) if different local areas are connected in such a way that they result in overlapping circles⁸. The delineation of each local area can only be undertaken on a case by case basis by taking into account specific local circumstances.
19. The market investigation has confirmed that the radius of a 20 to 30 minutes drive for customers to reach their outlets is appropriate for the Czech Republic. Furthermore, according to the parties' competitors, the local markets at the level of the LAU 1 as proposed by the parties are a sufficient approximation to the relevant radius for the assessment of this transaction.
20. At the same time, the parties' competitors confirmed that they are active at national level and their strategic decisions like product range, assortment and advertising are decided at national level. However, it does not seem appropriate to define the retail market for daily consumer goods to be national in scope, as from demand side perspective, these markets are local.

⁷ E.g. decision in cases IV/M.1085-Promodes/Catteau par. 14, COMP/M.1221-Rewe/Meinl par. 18 and COMP/M.1684-Carrefour/Promodes par. 24.

⁸ E.g. see COMP/M.1221-721Rewe/Meinl par. 18 and COMP/M.1684-Carrefour/Promodes par. 25.

Procurement

21. The Commission has in previous cases defined the markets for procurement of daily consumer goods to be national in scope.⁹
22. For the purposes of this case, the exact product and geographical market definitions may be left open since under all alternative definitions considered, effective competition is not significantly impeded.

3. Competitive analysis

Retail market of daily consumer goods

23. The analysis of the impact of the transaction on the Czech retail market for daily consumer goods, on the basis of a national market definition, shows the combined market shares as follows in the table below¹⁰. The change in the ranking in the table from all sales to food/near-food (not including non-groceries) sales is, as has been explained by the parties, due to the fact that competitors have different non-grocery/all sales ratios.

Format	Market Share all sales %	Market Share food / near-food %
Schwarz Group	[20-30]	[10-20]
Ahold	[10-20]	[10-20]
Rewe	[10-20]	[10-20]
Tesco	[10-20]	[10-20]
Globus	[5-10]	[5-10]
Tengelmann	[5-10]	[5-10]
Carrefour	[5-10]	[5-10]
SPAR (Austria)	[5-10]	[5-10]
Delhaize Group	[0-5]	[5-10]
COOP EURO	[0-5]	[0-5]
Norma	[0-5]	[0-5]
Edeka	[0-5]	[0-5]
Total	100	100

24. The new entity will become the third player, after Schwarz group and Ahold (based on all store sales assessment) or the second player, after Schwarz group (based on a food/near-food assessment). However, it can be seen that the combined market share is overall relatively low. All the major European retailers are active in the Czech Republic so that the new entity will face strong competition
25. A number of foreign trading groups/chains have successfully entered the Czech market at subsequent points of time (Delhaize, Ahold, Billa and Meinl as early movers in the early 90s, later Edeka, Metro, Penny, Plus and Norma, then Globus, in recent years Carrefour, Tesco and Spar Austria). In the meantime, competition between the large international retailers has led to withdrawals by Edeka, Carrefour and Meinl. This may be understood as first signs of

⁹ COMP/M.1221 REWE/Meinl, par. 83; COMP/M.1684 Carrefour/Promodes, par. 28.

¹⁰ Source : Form CO based on Planet Retail.

consolidation and maturity. However, the parties believe that barriers to entry are low and that the Czech market is still a growing market.

26. The market investigation has confirmed that the Czech market has considerable economic potential. A number of competitors have confirmed that they plan to open one or more new outlets in the next 1-2 years. The market participants expect new outlets by international players to be opened. The market investigation has further confirmed that the retail grocery market in the Czech Republic is expected to grow by approximately 2 % within the next 3-5 years.
27. Therefore, the transaction does not lead to non-coordinated effects resulting in a significant impediment of effective competition in the Czech Republic, in particular through creation or strengthening of a dominant position.
28. On the basis of local markets there are 19 affected markets in which the parties have a combined market share above 15 %. Based on a food/near-food assessment as proposed by the parties, they have a combined market share above [20-30] % in 2 local markets (Jablonec nad Nisou and Strakonice) and above [20-30] % in 3 local markets¹¹. The local markets in which the combined market share of food/near-food goods exceeds [20-30] % are as follows:

2005	Billa	Penny	Delvita	Combined market share
Local market	Market share in %	Market share in %	Market share in %	Market share in %
Cheb	[0-5]	[10-20]	[5-10]	[20-30]
Jablonec nad Nisou	[5-10]	[10-20]	[0-5]	[30-40]
Plzeň-město	[0-5]	[10-20]	[10-20]	[20-30]
Strakonice	[5-10]	[20-30]	[5-10]	[30-40]
Trutnov	[5-10]	[10-20]	[10-20]	[20-30]

29. For all of these local markets, although REWE's acquisition of Delvita will strengthen its position on certain local markets, this situation will not affect effective competition due to a significant presence of the major competitors in all affected markets.
30. Moreover, at least for the local markets of Cheb, Jablonec nad Nisou, Strakonice and Trutnov, it is unlikely that they would constitute substantial parts of the common market. The local markets of Strakonice and Jablonec nad Nisou are relatively small areas detached from the major urban clusters of the Czech Republic such as Prague, Brno and Ostrava. In addition, all 5 local markets where the parties have a combined market share above [20-30]% are highly competitive markets with a number of competitors' outlets.

¹¹ Based on an all store sales assessment, there is only 1 local market in which the parties have a combined market share above [20-30] % (Strakonice) and 1 local market with a combined market share of above [20-30] % (Jablonec nad Nisou).

31. For the reasons stated above, the concentration does not lead to competition concerns in any of the local markets mentioned above.

Procurement

32. On the markets for procurement of daily consumer goods the combined market share of the parties will be above 15 % in only one market ([10-20]% in the pet food market) out of the parties' defined product groups (bread, cakes and pastries; dairy products; non-alcoholic beverages; hot beverages; confectionary goods; staple foods; baby food; pet food; toiletries and cosmetics; detergents, cleaning agents and products). Therefore, most of the procurement markets would be non-affected markets. As for pet food, in view of the limited market share, it is unlikely that the concentration would lead to competition concerns.

IV. CONCLUSION

33. 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 (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission