

***Case No COMP/M.5906 - ONE
EQUITY PARTNERS/
CONSTANTIA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/06/2010

***In electronic form on the EUR-Lex website under
document number 32010M5906***



EUROPEAN COMMISSION

Brussels, 18.06.2010

SG-Greffe(2010) D/8652
C(2010) 4230

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5906-ONE EQUITY PARTNERS/ CONSTANTIA
Notification of 21.5.2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 21 May 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the undertaking SulipoBeteiligungsverwaltungs GmbH, an acquisition company based in Vienna, controlled by One Equity Partners advised funds ("OEP"; controlled by J.P. Morgan Chase & Co.) will acquire sole control of Constantia Packaging AG ("CPAG") and its affiliated companies including Belisce d.d. ("Belisce") within the meaning of Article 3 (1) (b) of the ECMR, by way of purchase of shares.

I. THE PARTIES

2. **OEP** is a private equity undertaking which focuses on the acquisition of shareholdings in companies that are active in mature middle-sized market with a particular emphasis on corporate partnerships and divestitures. OEP is indirectly solely controlled by JP Morgan Chase ('JPMC').

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

3. **CPAG** is a publicly listed Austrian management holding, investing in industrial companies and related services. CPAG has divided its business activities into three segments: (i) aluminium, (ii) corrugated board, and (iii) flexible packaging. CPBV, which is owned by the Herbert Turnauer Foundation, currently holds a 90.79% stake in CPAG.
4. **Belisce** is a Croatian company listed on the Zagreb stock exchange. It is a supplier of recycled paper, corrugated board and corrugated cases and materials and is active in several South-Eastern European countries. Prior to the completion of OEP's acquisition of CPAG, the latter plans to acquire sole control of Belisce, through of acquisition of shares following a takeover bid. Belisce would thus be an affiliated company of CPAG

II. THE OPERATION

5. On 12 October 2009, Sulipo Beteiligungsverwaltungs GmbH ('Sulipo'), an acquisition company controlled by One Equity Partners III, L.P. and certain affiliated funds ('the Funds'), reached an agreement with CPBV to acquire a stake of 65.79% in CPAG. Sulipo has also reached an agreement with a shareholder holding free float shares in CPAG, to acquire additional 0.71% of CPAG. OEP will thus acquire at least 66.5% in CPAG.³ CPBV will indirectly retain 20-25% in CPAG, but will not hold any control over the company.

III. CONCENTRATION

6. The proposed transaction will lead to the acquisition by OEP of indirect sole control over CPAG, and thus constitutes a concentration within the meaning of Article 3 (1) (b) of the ECMR.
7. On 13 January 2010, the Commission already cleared a proposed acquisition of CPAG by OEP (Case COMP/M.5698 ONE EQUITY PARTNERS / CONSTANTIA). However, after the clearance decision the parties informed the Commission that prior to the closing of the proposed acquisition of CPAG, the latter would be extended as to include a Croatian company, Belisce.⁴ As the scope of the originally notified acquisition changed (thus leading to a different concentration), the parties have now submitted a new notification which includes the enlarged target company.

IV. UNION DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (JPMC: EUR [...], CPAG: EUR [...])⁵. Each of them has a Union-wide turnover in excess of EUR 250 million (JPMC: EUR [...], CPAG: EUR [...]), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

V. COMPETITIVE ASSESSMENT

³ In addition, Sulipo has made an offer to acquire an additional 5% of the registered share capital in CPAG from CPBV, and Sulipo will also submit a mandatory bid to the remaining free float shareholders or squeeze them out pursuant to the Austrian Squeeze-out act.

⁴ The acquisition of Belisce by CPAG (by way of a public offer) is being pursued independently from the CPAG/OEP transaction.

⁵ Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

9. There is no horizontal overlap between the activities of any of the JPMC/OEP portfolio companies and CPAG (or any of CPAG's affiliated companies including Belisce), so the transaction does not give rise to any horizontally affected markets.⁶
10. There is a vertical link between one of the JPMC/OEP portfolio companies -Cereals Holding - and CPAG's activities in flexible packaging. Cereals Holding is active in the production of private label cereals, mueslis and cereal bars. Cereals Holding purchases flexible packaging in order to package its products for retail sale. As Cereals Holding has market shares exceeding 25% on some of the downstream product markets, these markets are affected.

A. Relevant product markets

Upstream markets – flexible packaging

11. In previous decisions, the Commission considered separate product markets for different end-use segments of flexible packaging including flexible packaging for food. In *Ancor/Alcan*⁷ the Commission considered a separate segment for flexible packaging for food, with a further sub-segmentation based on the type of food packaged, including: (i) confectionery; (ii) fresh and processed meat, fish and poultry; (iii) cheese and dairy; (iv) tea, ground coffee and beans; (v) frozen food and ice cream, (vi) crisps, snacks and nuts, (vii) dried and dehydrated foods and cereals, (viii) bread, biscuits and cakes, and (ix) fresh fruits and vegetables. The Commission nevertheless left the market definition open as to whether the flexible packaging market as whole, the food segment, or the respective sub-segments constitute relevant product markets.
12. The parties also propose to analyse the market on the basis of the above narrow segmentation used in *Ancor/Alcan*. Based on the supply requirements of Cereals Holding (which are relevant for the assessments of the vertical link), the following relevant product markets would be considered: (i) the segment of confectionery flexible packaging (as regards cereal bars); and (ii) the segment of dried and dehydrated foods and cereals (as regards cereals and muesli).
13. However, it is not necessary to reach a definite conclusion on the precise relevant product market as regards the downstream market, as there are no competition concerns in the present case.

⁶ For the sake of completeness, the parties mention that JPMC/OEP funds hold a majority shareholding in Global Packaging, a holding company whose primary operating subsidiary is Aluprint S.A. de C.V ('Aluprint'). Aluprint is mainly active in flexible packaging and folding carton packaging, however Aluprint is only active in the Americas and mainly in Mexico, and is thus not active in Europe. Given the fact that Global Packaging/Aluprint is not active in Europe, there are no horizontal overlaps between the Parties' activities in flexible packaging in the EEA (this market was previously considered to be EEA-wide in scope in previous Commission decisions – see recital 17 below).

⁷ Commission Decision of 14.12.2009, Case COMP/M.5599 – *Ancor/Alcan*, paras. 17 to 22.

Downstream markets – cereals and muesli

14. In a previous decision⁸, the Commission analysed the markets separately for (i) ready-to-eat-cereals ("RTEC", with possible further segmentations into muesli, non-muesli RTEC, and according to target groups such as children, adult/family or "healthy" segments) and for (ii) cereal bars consumed "on-the-go", making a further distinction between branded products and private label products for RTEC and cereal bars.
15. The parties also assess the markets on the basis of this decisional practice. In relation to the vertical link with the upstream flexible packaging markets, the parties note that most RTEC cereals -including many mueslis - are packaged in transparent bags put in a folding carton, whereas CPAG is not active in producing neither such transparent bags nor folding carton. However, as regards the muesli segment of RTEC products specifically, the parties explain that muesli is sometimes packaged in flexible packaging (so called vertical form-fill-seal bags), a market in which CPAG is active. Flexible packaging is also used for cereal bars. The parties also note that Cereals Holding is predominantly active in supplying the private label products. Therefore, they propose to analyse the downstream market on the basis of the market for (i) private label muesli and (ii) private label cereals.
16. However, it is not necessary to reach a definite conclusion on the precise relevant product market, as there are no competition concerns in the present case.

B. Relevant geographic markets

Upstream markets – flexible packaging

17. In previous decisions, the Commission considered the flexible packaging markets (including the food segments) to be EEA-wide in scope.⁹ The parties agree to that delineation. In the present case, it is not necessary to reach a definite conclusion on the precise relevant geographic market, as there are no competition concerns.

Downstream markets – cereals and muesli

18. In a previous decision¹⁰, the Commission left open whether the relevant markets for RTEC (including muesli) and cereal bars are national or wider. The parties analyse the market on both levels. In any event, in the absence of any competition concerns, it is not necessary to reach a definite conclusion on the precise relevant geographic market in this case.

⁸ Commission decision of 31 October 2007, case COMP/M.4738 *OEP / MSP-Stiftung / DVG / Dailycer group*.

⁹ See Commission Decision of 14.12.2009, Case COMP/M.5599 – *Amcor/Alcan*.

¹⁰ Commission decision of 31 October 2007, case COMP/M.4738 *OEP / MSP-Stiftung / DVG / Dailycer group*.

C. Competitive assessment of the vertical link between flexible packaging and supply of muesli and cereal bars

19. The parties estimate that CPAG' market shares on the upstream markets are below 15% even on the narrow segments of flexible packaging: on an EEA market for flexible packaging used for dried and dehydrated foods, CPAG's market shares would be below 5%, whereas on the market for flexible packaging used for confectionary, its EEA-wide market share would be 12.5%.
20. As the upstream market shares of CPAG are very limited, it seems very unlikely that the merged entity could have the ability to foreclose its downstream competitors as regards input.
21. On the downstream markets for private label muesli and private label cereals, Cereals Holding would have market shares in excess of 25% in a number of Members States (for private label muesli: Germany [30-40%], the Netherlands [30-40%], in Spain [50-60%], Portugal [40-50%]; for private label cereal bars: Germany [30-40%], the Netherlands [30-40%], Spain [50-60%], Portugal [30-40%], UK [40-50%]), therefore the vertical relationship is affected by the transaction.
22. However, even Cereals Holdings have relatively high market shares on a number of narrow downstream markets, its importance as a customer of flexible packaging is negligible. Its total spent on flexible packaging in 2009 represented only EUR [...] million for muesli and EUR [...] million for cereal bars. This represents a very small fraction of far below [0-5%] of the total demand of the two respective upstream product segments of flexible packaging.¹¹ Consequently, any concerns of customer foreclosure can be dismissed as well.

VI. CONCLUSION

23. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the European Commission,
(*signed*)
Joaquín ALMUNIA
Vice-President of the European
Commission

¹¹ [0-5%] of demand for flexible packaging for dried and dehydrated food, and [0-5%] of the market for flexible packaging for confectionary.