

*Case No COMP/M.6822 –
Groupe Auchan/ Real/ Real
Hypermarket Romania*

Only the English, Romanian and Polish texts are authentic."

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

Article 4(4)
Date: 7.3.2013



EUROPEAN COMMISSION

Brussels, 7.3.2013
SG-Greffe(2013)
C(2013)

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

To the Polish Competition Authority

To the Romanian Competition Authority

Dear Sirs,

Subject: Case No COMP/M.6822 – Groupe Auchan/ Real/ Real Hypermarket Romania
Reasoned Submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to Poland and Romania

Date of filing: 31 January 2013

Legal deadline for response of Member States: 25 February 2013

Legal deadline for the Commission decision under Article 4(4): 07 March 2013

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.

I. INTRODUCTION

1. On 31 January 2013, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the transaction to be examined in its entirety by the competent authorities of Poland and Romania. More specifically, the parties request that the Polish part of the transaction be examined by the competent authorities of Poland and the Romanian part of the transaction, be examined by the competent authorities of Romania.
2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member States where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 31 January 2013.
4. By letter of 13 February 2013, the Polish Competition Authority as the competent authority of Poland informed the Commission that Poland agrees with the proposed referral.
5. By letter of 13 February 2013, the Romanian Competition Authority as the competent authority of Romania informed the Commission that Romania agrees with the proposed referral.

II. THE PARTIES

6. Groupe Auchan SA ("Auchan") is an international retail group active primarily in the retail of daily consumer goods in various countries, including Poland and Romania, where Auchan operates a network of modern retail outlets including hypermarkets and supermarkets.² In addition to its core retail activities, Auchan also has limited activities in real estate, banking and other areas such as e-commerce and petrol stations.
7. Real is one of the four sales divisions of Metro, a retail and wholesale company with over 2 200 outlets in 32 countries in Europe, Africa and Asia. Real Poland has 53 hypermarkets (plus 6 currently under development) and Real Romania has 24 hypermarkets.

III. THE OPERATION AND CONCENTRATION

8. The transaction involves a concentration by which the undertaking Auchan intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the undertaking Real Poland and Real Romania by way of purchase of shares. On 30 November 2012, Auchan and Metro, and other of their affiliates, entered into a Sale

² In Poland, Auchan operates 27 hypermarkets and 31 supermarkets. Two retail outlets are currently under development. In Romania, Auchan operates 11 hypermarkets (two projects are under development).

and Purchase Agreement regarding Real entities in Poland, Romania, Russia and Ukraine (the "Real Target").³ According to this agreement, Auchan will acquire all shares in Real Poland and Real Romania with certain carve outs.⁴

IV. EU DIMENSION

9. The transaction has an EU dimension within the meaning of Article 1(2) of the Merger Regulation since the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁵ (Auchan: EUR [...] million; Real Target: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Auchan: EUR [...] million; Real Target: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.⁶

V. ASSESSMENT

A. Relevant product markets

10. On the basis of the information submitted by the parties in the Reasoned Submission, the transaction will lead to a number of affected markets for the retail of daily consumer goods in Poland and Romania.⁷

B. Relevant geographic market

11. The Commission has found in a number of previous decisions that the markets for the retail of daily consumer goods are generally local in scope and correspond to a radius of 20 to 30 minutes driving time around the outlet.⁸ In other decisions, the Commission found that the market for the retail or sale of daily consumer goods can be broader, i.e. regional or national, if different local areas are connected in such a way that they result in overlapping circles.⁹ The markets concerned by the transaction present all the characteristics of distinct markets.

³ The proposed transaction was notified to the Russian Competition Authority on 29 December 2012 and to the Ukrainian Competition Authority on 4 January 2013.

⁴ Real Poland undertook to transfer, prior to the implementation of the proposed transaction, a lease agreement for a warehouse and certain related contracts to Metro or one of its affiliates. Four hypermarkets operated by Real Romania will be transferred, prior to the implementation of the proposed transaction, to Metro or one of its affiliates.

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

⁶ The turnover of the Real Target is EUR [...] million in Poland and EUR [...] million in Romania.

⁷ The proposed transaction also leads to overlaps on a number of procurement markets. However, based on the information provided in the reasoned submission, none of these markets are affected.

⁸ See e.g. Case COMP/M.6506 - *Groupe Auchan/Magyar Hipermarket*.

⁹ See e.g. Case COMP/M.4522 - *Carrefour/Ahold Polska*. As regards the procurement markets that, according to the reasoned submission, are not affected, the Commission's previous decisions indicate that they are national in scope (see Case M.5112 - *REWE/Plus Discount*).

12. The geographic focus of the proposed concentration would be local or sub-national but at utmost national.

C. Assessment

Legal requirements under article 4(4) of the Merger Regulation

13. The Commission has assessed whether there are indications that the concentration significantly affects competition in a market or markets and whether the markets in question are within a Member State and present all characteristics of a distinct market.
14. In Poland, the proposed transaction will lead to: (i) 33 affected markets if the geographic scope of the markets is defined by a 20 minute driving time catchment area, (ii) 34 affected markets if the geographic scope of the markets is defined by a 30 minute driving time catchment area, and (iii) 6 affected markets at the level of the agglomeration area. In some instances, the parties' combined market share (in value) would be above [30-40]% (e.g. in the market defined by a 20 minutes driving time catchment area around the Warszawa-Puławska outlet, Real would have a [20-30]% market share and Auchan a [10-20]% market share; similarly in the market defined by a 20 minutes driving time catchment area around the Szczecin – Struga outlet, Real would have a [10-20]% market share and Auchan a [10-20]% market share).
15. In Romania, the proposed transaction will lead to four affected markets in the Bucharest region and seven affected markets in other areas, with a combined share (in value) over [30-40]% in some of these markets (e.g. Craiova, Târgu Mureş, Timișoara).
16. In view of the foregoing, and in accordance with points 17 and 18 of the Commission Notice on Case Referral in respect of concentrations,¹⁰ the transaction may significantly affect competition in markets in Poland and Romania without having any impact on any other market within the European Union. In addition, the markets concerned by the proposed transaction present all the characteristics of distinct markets since they are not bigger than national. It follows that the legal requirements of Article 4(4) of the Merger Regulation are met.

Additional factors

17. Given that the likely focus of the competitive effects of the proposed transaction is confined to Poland and Romania, the Polish Competition Authority ("UOKiK") and the Romanian Competition Authority ("Consiliul Concurenței") are well placed to examine the Polish and Romanian markets respectively. Also, both competition authorities have dealt extensively with the relevant product markets in their previous decisions.¹¹

¹⁰ OJ C 56, 5.3.2005.

¹¹ For the Polish Competition Authority, see cases DKK 161/2011 Jeronimo Martins Dystrybucja/Zatoka, DKK 153/2011 Jeronimo Martins Dystrybucja/Marcpol, DKK 128/2011 Eurocash/Tradis. For the Romanian Competition Authority, see cases Nr 43/30.06.2009 Mega Image SRL/S.C. Mialan Comimpex SRL; Nr 17/12.03.2009 Auchanhyper SAS Franta/SC MGCV Distri Hiper SA Bucuresti/SC MGCV Foreign Acquisitions SRL Bucuresti; Nr 2/18.01.2010 Polish Gamma Group Sarl/Profi Rom Food SEL, Albinuta Shops SRL, DT Logistics SRL; Nr 07/21.02.201 Profi/Al Comsib.

18. In addition, in previous cases on the retail of daily consumer goods,¹² the Commission has also taken the step of referring the matters to the Polish Competition Authority and the Romanian Competition Authority.

VI. REFERRAL

19. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in markets within two Member States which present all the characteristics of distinct markets.
20. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in Poland and in Romania respectively.

VII. CONCLUSION

21. For the above reasons and given that both Member States, Poland and Romania, expressed their agreement to take jurisdiction, the Commission has decided to refer the transaction to be examined by Poland with respect to the acquisition of Real Poland and to Romania with respect to the acquisition of Real Romania. This decision is adopted in application of Article 4(4) of the Merger Regulation.

For the Commission
(signed)
Alexander ITALIANER
Director General

¹² See e.g. COMP/M.4522 - *Carrefour/Ahold Polska*; Case COMP/M.5790 - *Lidl/Plus Romania/Plus Bulgaria*. These referrals were based on Article 9(2)(b) of the Merger Regulation.