



EUROPEAN COMMISSION

DG Competition

***Case M.7933-  
CARREFOUR / BILLA  
ROMANIA and BILLA  
INVEST CONSTRUCT***

Only the English text is available and authentic.

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

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Article: 4(4)

Date: 12 February 2016



## EUROPEAN COMMISSION

Brussels, 12.02.2016  
C(2016) 961 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 National Competition Authority:**

Dear Sirs,

**Subject: Case M.7933-CARREFOUR / BILLA ROMANIA and BILLA INVEST CONSTRUCT**  
**Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004<sup>1</sup> for referral of the case to Romania and Article 57 of the Agreement on the European Economic Area<sup>2</sup>.**

**Date of filing:** 08.01.2016

**Legal deadline for response of Member States:** 01.02.2016

**Legal deadline for the Commission decision under Article 4(4):** 12.02.2016

### I. INTRODUCTION

1. On 8 January 2016, 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. Carrefour Nederland B.V. ("Carrefour") requests the operation to be examined in its entirety by the competent authority of Romania.

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<sup>1</sup> 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.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 ("the EEA Agreement").

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 State 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 11 January 2016.
4. By letter of 28 January 2016, the Romanian Competition Council (hereinafter referred to as "RCC") as the competent authority of Romania informed the Commission that Romania agrees with the proposed referral.

## **II. THE PARTIES**

5. Carrefour is a Dutch subsidiary of the Carrefour Group, a world-leading retailer of food and non-food products operating modern trade stores (mainly hypermarkets and supermarkets, but also other type of retail stores) in Europe, Latin America and Asia in more than 30 countries. Carrefour Group operates in Romania hypermarkets under the "Carrefour" brand, supermarkets under the Carrefour "market" brand and some convenience stores under the Carrefour "express" brand.
6. Billa Romania S.R.L. ("Billa Romania") is a company which is currently part of the Rewe Group. Billa Romania mainly operates modern trade supermarkets stores in Romania under the brand "Billa".
7. Billa Invest Construct S.R.L. ("Billa Invest") undertakes property management activities in Romania. Specifically, Billa Invest is currently active in the development and leasing of commercial spaces to Billa Romania. Billa Invest controls Allib Rom S.R.L. ("Allib"), which owns one commercial space partially rented to Billa Romania (the other part being rented to another Rewe Group entity) and is operated by such as a supermarket store. Hence, the activities of Allib are performed intra-group, such company having the role of a real estate investment special purpose vehicle.

## **III. THE OPERATION AND CONCENTRATION**

8. The transaction involves the acquisition of sole control by Carrefour of the retail business operated in Romania under the "Billa" brand by Rewe Group (the 'Transaction'). The Transaction entails acquisition of sole direct control over Billa Romania and Billa Invest, which are hereinafter referred to as "the Target".<sup>3</sup> Post-Transaction, Rewe Group shall maintain its other retail business in Romania, focusing on its discounter stores chains.
9. The sale and purchase agreement between REWE International AG and REWE International Dienstleistungs-GmbH (the sellers) and Carrefour (the buyer) was signed on 21 December 2015.

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<sup>3</sup> Carrefour Romania S.A., a Romanian subsidiary of the Carrefour Group will also obtain a minority stake in the Target.

#### IV. EU DIMENSION

10. The Transaction has an EU dimension within the meaning of Article 1 of the Merger Regulation since the undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million<sup>4</sup> (Carrefour: EUR 74 706 million; the Target: EUR [...] million). Each of them have an EU-wide turnover in excess of EUR 250 million (Carrefour: EUR [...] million; the Target: EUR [...] million) but only one of them (the Target) achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.<sup>5</sup>
11. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

#### V. ASSESSMENT

12. On the basis of the information submitted in the Reasoned Submission, the proposed Transaction will give rise to several horizontally and possibly vertically affected markets in Romania in the markets for the retail for consumer goods and the procurement of daily consumer goods.
13. The Transaction does not give rise to any affected market outside of Romania.

##### A Relevant product markets

###### *Downstream: Retail of daily consumer goods*

14. In past decisions the Commission has found that, within the retail segment, a separate product market exists for the sale of daily consumer goods mainly carried out by retail outlets such as hypermarkets, supermarkets and discount chains (so-called ‘modern distribution channels’<sup>6</sup>). These retail outlets offer consumers a basket of fresh and dry foodstuffs and non-food household consumables sold in a supermarket environment.
15. The Commission considered retail outlets of the modern distribution channels to be active in different markets than other retailers, such as specialised outlets (butchers, bakers, etc.) and service stations, which have been excluded from the relevant product market definition in previous decisions<sup>7</sup>. These other retailers fulfil a specialist or convenience function, typically offering a range and variety of products narrower than that found in hypermarkets and supermarkets<sup>8</sup>. For these reasons, they have been considered to belong to a different product market<sup>9</sup>.

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<sup>4</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

<sup>5</sup> Romania: EUR [...] million.

<sup>6</sup> M.7224 – *Koninklijke Ahold/Spar CZ*, para. 9; M.5112 – *Rewe/Plus Discount*, para. 15; M.4590 – *Rewe/Delvita*, para. 9-14; M.2604 – *ICA Ahold/Dansk Supermarked*, para. 10, 11; M.4686 – *Louis Delhaize/Magyar Hipermarket Kft.*, para. 8; M.3905 – *TESCO/Carrefour*, para. 10; M.5047 – *REWE/Adeg*, para. 24.

<sup>7</sup> M.784 – *Kesko/Tuko*, para. 18-20, M.1221 - *Rewe/Meinl*, para. 10, M.5790 – *Lidl/Plus Romania/Plus Bulgaria*, para. 11-13.

<sup>8</sup> M.3464 – *Kesko/Ica/JV*, para.12.

<sup>9</sup> M.5677 – *Schuitema/Super de Boer Assets*, para. 18.

*Upstream: Procurement of daily consumer goods*

16. The Commission has previously defined a separate market for the procurement of daily consumer goods, comprising the sale of daily consumer goods to customers such as wholesalers, retailers and other firms<sup>10</sup>. Furthermore, the Commission has previously considered, but so far left open, whether a further distinction should be made between different sales channels, such as food-retailing, specialised trade, delicatessen, cash and carry stores and other wholesalers, drugstores and export trade<sup>11</sup>. The Commission also noted that food-retailing trade is by far the most important sales channel for most categories of daily consumer goods.<sup>12</sup>
17. In its past decisional practice, the Commission also considered whether the procurement market for daily consumer goods should be further segmented according to specific product groups/categories such as bread, cases and pastry; dairy products; non-alcoholic beverages; hot beverages, etc. The main reason for considering a further delineation of the procurement market by product category is the limited supply-side substitutability that exists between the product categories from the suppliers' perspective. In particular, producers typically only provide a single product or category of products and their flexibility to switch to alternative products is limited<sup>13</sup>. Against this background, the Commission has previously considered a further segmentation of the procurement market for daily consumer goods into 23 product categories<sup>14</sup>.

**B Relevant geographic markets**

*Retail of daily consumer goods*

18. The geographic scope of the market for the retail of daily consumer goods has generally been considered by the Commission to be local in scope, as delineated by the boundaries of a territory where the outlets can be reached easily by consumers.

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<sup>10</sup> M.7224 – Koninklijke Ahold/Spar CZ, para.10, M.5122 – Rewe/Plus Discount, para. 21; M.1221 – Rewe/Meinl, para 83; and M.1684 – Carrefour/Promodes, para 24.

<sup>11</sup> M.1221 – Rewe/Meinl, para. 79-81; M.6588 - Ahold/Koninklijke Valk Holding, para. 9, the Commission considered a separate market for 'the procurement of daily consumer goods for sale via retailers'.

<sup>12</sup> M.1221 – Rewe/Meinl, para. 79.

<sup>13</sup> M.5112 – Rewe/Plus Discount, para. 21; M.4590 – Rewe/Delvita, para 15; M.784 – Kesko/Tuko, para 33; and M.1221 – Rewe/Meinl, para. 75-77.

<sup>14</sup> (1) Liquids (including soft drinks, beer and cider, water, still wine, sparkling wine and spirits); (2) Hardware store products (including cleaning products, sponges, toilet paper and kitchen rolls, deodorants, insecticides, household soaps, washing products, water softeners, washing-up liquids, dishwasher products, all-purpose cleaning products/detergents); (3) Perfumes/hygiene products (paper or cotton hygiene/sanitary products, perfumes, health-care products); (4) Dry groceries (including breakfast products, sweet biscuits, cakes, confectionery, desserts, cake-making ingredients, baby foods, soups, pasta, starch-containing foodstuffs, preserves and prepared foods, condiments and seasonings, aperitif products, pet foods); (5) Parapharmaceutical products; (6) Perishable goods sold on a self-service basis (dairy products and eggs, poultry, frozen foods, ice cream, factory-made pastries and bread); (7) Delicatessen (prepared meat products and seafood); (8) Fish; (9) Fruit and vegetables; (10) Fresh bread and cakes; (11) Meat; (12) Do-it-yourself; (13) Home decorating; (14) Culture; (15) Toys/leisure/relaxation; (16) Gardening; (17) Motor car accessories; (18) Large domestic electrical appliances; (19) Small domestic electrical; (20) Photography/movie-making; (21) Hi-fi/audio; (22) TV/video; and (23) Textiles.

To that end, the Commission has taken into account radii of between 10 and 30 minutes driving time<sup>15</sup>.

*Procurement of daily consumer goods*

19. In previous decisions, the Commission has consistently defined the market for the procurement of daily consumer goods as national in scope, rather than regional (i.e. encompassing several countries) or EEA-wide<sup>16</sup>. The main reasons are the fact that consumer preferences relate to national products and suppliers generally negotiate on a national level<sup>17</sup>.

**C Assessment**

20. On the basis of the information provided by the Parties in the Reasoned Submission, the Transaction is an appropriate candidate for pre-filing referral from the Commission to Romania in accordance with Article 4(4) of the Merger Regulation.

21. According to Article 4(4) of the Merger Regulation, a concentration may be referred to a Member State if it may significantly affect competition in a market or markets and where the markets in question are within a Member State and present all characteristics of distinct markets.

(i) *The Transaction may significantly affect competition in a market or markets*

22. According to paragraph 17 of the Commission Notice on case referral in respect of concentrations<sup>18</sup>, the existence of an affected market is generally considered sufficient to meet the requirements set forth in Article 4(4) of the Merger Regulation.

23. In the case at hand, the Transaction will generate a number of affected markets in Romania.

24. With respect to retail markets, Carrefour submits that on the basis of 30 minute drive-time catchment areas centred on the Billa stores, the Transaction would give rise to 45 affected markets in the local areas where the Parties overlap. This would be the case for: 2 catchment areas in [...], 4 in [...], 13 in [...], 1 in [...], 4 in [...], 1 in [...], 3 in [...], 1 in [...], 3 in [...], 2 in [...], 1 in [...], 1 in [...], 1 in [...], 1 in [...], 1 in [...], 3 in [...], 1 in [...] and 2 in [...]. In such local markets, the combined market shares of the Parties would range from [over 20]%.

25. With respect to procurement markets, Carrefour estimates Billa Romania's market share to be less than [0-5]% and Carrefour's to be less than 10%. On this basis, no horizontally affected markets appear to arise in respect of procurement markets of daily consumer goods in Romania. However, given the combined estimated market

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<sup>15</sup> M.6506 – *Groupe Auchan/Magyar Hipermarket*, para. 13; M.6822 – *Groupe Auchan/Real/Real Hypermarket Romania*, para. 11; M.5790 – *Lidl/Plus Romania/Plus Bulgaria*, para. 14; M.5176 – *CVC/Schuitema*.

<sup>16</sup> M.7224 – *Koninklijke Ahold/Spar CZ*, para.12, M.5112 – *Rewe/Plus Discount*, para. 22-23.

<sup>17</sup> M.6588 – *Koninklijke Ahold/Valk Holding*, para. 18; M.1313 – *Danish Crown/Vestjyske Slagterier*; M.1221 – *Rewe/Meinl*; and M.3464 – *Kesko/ICA/JV*.

<sup>18</sup> OJ C 56, 5.3.2005, p. 2.

shares of the Parties in respect of the downstream retail markets, the Transaction would appear to give rise to vertically affected markets.

26. In light of the above, the first requirement set forth by Article 4(4) of the Merger Regulation is met.

(ii) *The market in question must be within a Member State and present all the characteristics of a distinct market*

27. According to paragraph 18 of the Commission Notice on case referral in respect of concentrations, the second requirement set forth by Article 4(4) of the Merger Regulation is satisfied if the geographic scope of the markets where competition is affected is national or narrower than national.

28. As indicated above, the markets for the retail and for the procurement of daily consumer goods contain strong local elements and have been defined as national or narrower than national in scope.<sup>19</sup>

29. Therefore, the second legal requirement set forth by Article 4(4) of the Merger Regulation is met.

(iii) *Conclusion on the legal requirements*

30. In view of the foregoing, the principal effects of the Transaction would be restricted to Romania. Further, the markets in question present all the characteristics of distinct markets.

*Additional factors*

31. According to paragraphs 9 to 14 of the Notice on case referral in respect of concentrations, jurisdiction should only be re-attributed to another authority where the latter is the more appropriate for dealing with the concentration, and taking into account the benefits of one-stop-shop and legal certainty.

32. The RCC has significant experience in assessing cases in the modern trade sector, notably the acquisition of sole control by Mega Image SRL over assets of Angst Retail SRL<sup>20</sup>, the acquisition of sole control by Auchan Romania SA over real-Hypermarket SRL<sup>21</sup>, the acquisition of sole control by Mega Image SRL over assets of Can Serv SRL<sup>22</sup>, and the acquisition of sole control by Mega Image SRL over assets of Mialan Comimpex SRL.<sup>23</sup>

33. Furthermore, given the local and national scope of the affected markets, a more in-depth local market assessment should be performed in view of verifying the competitive pressure applicable within the catchment area of each store. Since the Romanian modern trade is still under development and in the rural areas the modern

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<sup>19</sup> M.4301 *Alliance Boots/Cardinal Health*, paras 23 – 25, M.2573 *A&C/Grossfarma*, paras 14 – 16, M.7323 *Nordic Capital/GHD Verwaltung*, paras 30 – 3; M.3751-*Novartis/Hexal*, para 13.

<sup>20</sup> Decision No. 46/14/11/2014.

<sup>21</sup> Decision No. 32/29.07.2013.

<sup>22</sup> Decision No. 56/23.12.2010.

<sup>23</sup> Decision No. 56/43 of 30.06.2009.

trade ratio is significantly lower by reference to traditional trade, the case may require investigative efforts at local level for which the RCC is better suited to properly reach the markets involved, to understand its main characteristics and to deal with possible concerns.

34. Finally, a referral of the Transaction to the RCC satisfies the need to preserve the benefit of a "one-stop-shop" as there are no affected markets outside Romania. Accordingly, even in case of a referral of the Transaction, the benefit of the "one-stop-shop" would be preserved.

## **VI. REFERRAL**

35. On the basis of the information provided by Carrefour 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 a market within a Member State which presents all the characteristics of a distinct market. 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 Romania, and that the requested referral would also be consistent with point 20 of the Notice on case referral in respect of concentrations.

## **VII. CONCLUSION**

36. For the above reasons, and given that Romania has expressed its agreement to examine the Transaction, the Commission has decided to refer the Transaction in its entirety to be examined by the RCC. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*  
*(Signed)*  
*Johannes LAITENBERGER*  
*Director-General*