



EUROPEAN COMMISSION
DG Competition

Case M.8107 - CVC / AR PACKAGING

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/08/2016

***In electronic form on the EUR-Lex website under
document number 32016M8107***



EUROPEAN COMMISSION

Brussels, 25.8.2016
C(2016) 5550

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case M.8107-CVC / ÅR Packaging
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²**

- (1) On 1 August 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which CVC Capital Partners SICAV-FIS S.A. ("CVC", Luxembourg) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of ÅR Packaging Group AB (Sweden) by way of purchase of shares³. CVC and ÅR Packaging are collectively referred to as "Parties".

1. THE PARTIES AND THE OPERATION

- (2) CVC is a private equity fund providing investment advice to and managing investments on behalf of investment funds ("CVC Funds"). CVC Funds holds

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 1, 3.1.1994, p. 3 (the 'EEA Agreement').

³ Publication in the Official Journal of the European Union No C 290, 10.08.2017, p. 10.

interests in companies in various industries, including chemicals, utilities, manufacturing, retailing and distribution.

- (3) ÅR Packaging is a producer of paperboard and flexible packaging products, including flexible packaging for food, healthcare and pharmaceutical products. ÅR Packaging is jointly owned by A16 Packaging Limited and ACPack B.V. (together "the Sellers").
- (4) On 27 May 2016, Bidco, a special purpose vehicle indirectly owned by CVC Fund VI, and the Sellers entered into a sale and purchase agreement under which Bidco agreed to acquire 100% of the issued share capital of ÅR Packaging (the "Target"). Post-transaction CVC will acquire indirect sole control over the Target.
- (5) The transaction therefore constitutes a concentration within the meaning of Article 3(1)b of the Merger Regulation.

2. EU DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ [CVC Group: EUR [...] million, Target: EUR 514 million]. Each of them has an EU-wide turnover in excess of EUR 250 million [CVC Group: EUR [...] million, 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. The notified operation therefore has an EU dimension.

3. COMPETITIVE ASSESSMENT

- (7) Continental Foods, one of CVC Funds portfolio companies, specialises in food products such as packet soups, sauces and bouillon. It is primarily active in Belgium, France, Germany, Finland and Sweden. Alvogen, another CVC portfolio company is a niche pharmaceutical manufacturer operating in the US and Europe.
- (8) The transaction therefore gives rise to vertical relationships between the Target's upstream activities in flexible packaging and CVC's downstream activities in the market for (i) dry mix products and (ii) pharmaceutical products.
- (9) There are no horizontal overlaps between the Parties' activities.

3.1. Market definitions

3.1.1. Upstream market: flexible packaging

- (10) Flexible packaging involves the conversion and printing of plastic and cellulose films, aluminium foils and papers, which are used separately or in combination, to produce primary and secondary packaging products for a wide variety of end-users.

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

- (11) Previously, the Commission has found that the market for flexible packaging could be segmented on the basis of end-use applications as follows: (i) food, (ii) medical, (iii) pharmaceuticals, (iv) household products and (v) other non-food.⁵
- (12) Within food flexible packaging, a narrower segmentation has been considered by distinguishing flexible packaging in respect of various categories of food: (a) dairy; (b) beverages; (c) confectionary; (d) fresh; (e) dried; (f) frozen; and (g) pet food⁶, but it was ultimately left open. Within pharmaceutical flexible packaging, a narrower segmentation has been considered into (a) laminated sachets, (b) cold-form blister bases, (c) plastic-based blister bases and (d) blister lidding, but it was ultimately left open.⁷
- (13) The Parties submit that there is a high degree of supply-side substitutability since manufacturers of flexible packaging displaying one set of characteristics can readily produce flexible packaging displaying a different set of characteristics. Furthermore, according to the Parties, demand-side substitutability is inextricably linked to supply-side substitutability since each customer of flexible packaging has its own specific requirements.
- (14) The Commission has previously considered that the geographic market for flexible packaging is EEA-wide or wider, but ultimately left the market definition open.⁸ The Parties concur with the Commission's previous analysis on the geographic scope for flexible packaging.

3.1.2. *Downstream markets: dry food products and pharmaceutical products*

- (15) The Commission has previously found that Continental Foods was active in the market for the provision of instant dry soups and regular dry soups.⁹ The Commission also found a distinction between cold sauces and hot sauces with a further division of hot sauces into wet sauces and dry sauces.¹⁰ The Commission found the market for the production of food to be national in scope.¹¹
- (16) The Commission has previously considered that pharmaceuticals may be subdivided into therapeutic classes by reference to the Anatomical Therapeutic Classification (ATC) system which is a hierarchical and coded four-level system that classifies medicinal products according to their indication, therapeutic use, composition and mode of action.¹² The Commission has previously considered markets for pharmaceutical products to be national in scope, despite the trend for standardisation at a European level.¹³

⁵ M.5599-*Amcor / Alcan* (2004); M. 3225-*Alcan/Pechiney (II)* (2003); M.3049-*Alcan/Flexpack* (2003); M.2840-*Danapack/Teich/JV* (2002).

⁶ M.6681-*Strategic Value Partners/Kloeckner Holdings*; M.2441 *Amcor/Danisco / Ahlstrom*, (2001).

⁷ M.5599-*Amcor / Alcan* (2004).

⁸ M.5599-*Amcor / Alcan* (2004).

⁹ M.7028-*CVC / Certain European Subsidiaries of Campbell Soup*.

¹⁰ M.6753-*Orkla / Rieber & Son* ; M.1990-*Unilever / BestFoods*.

¹¹ M.6753-*Orkla / Rieber & Son*; M.5975-*Lion Capital / Picard Group*; M.3658-*Orkla/Chips*, M.1990-*Unilever / BestFoods*.

¹² M.7480-*Activis / Allergan*.

¹³ M.5502-*Merck / Schering-Plough*; M.5865-*Teva / Rathipharm*; M.4367-*APW / APSA / Nordic Capital / Capio* and M.3354 – *Sanofi-Synthelabo / Aventis*.

- (17) The Parties submit that the relevant downstream market for the purpose of assessing the proposed transaction would be the purchasing market for flexible packaging in the EEA rather than the downstream markets in which CVC's portfolio companies compete. According to the Parties, given the structure of supply and demand in the upstream market, Continental Foods' and Alvogen's market position at national level has no impact on competition either at downstream or upstream level.

3.1.3. Conclusion on market definitions

- (18) In light of the above, the Commission considers that the exact delineation of the relevant product and geographic markets can be left open in the present case, as no serious doubts arise under any plausible product and geographic market definitions.

3.2. Competitive assessment

3.2.1. Downstream markets

- (19) Continental Food purchases flexible food packaging for its dry mix products such as instant and regular dry soups and dry hot sauces. Its national market shares in the sale of soups and sauces range from [30-40]% to [90-100]%, but its share in the purchase of flexible food packaging is less than [0-5]% in the EEA.
- (20) Continental Foods spent only EUR [...] million in the EEA for flexible food packaging in 2015 which is very small in comparison to the Target's sales of flexible packaging of EUR [...] million and the size of the market which according to the Parties' submission is EUR 9 896 million. Continental Foods does not therefore constitute a sufficiently significant customer to raise customer foreclosure concerns with respect to the upstream market for flexible food packaging.
- (21) Alvogen is active in Bulgaria, Croatia, Ireland, Lithuania, Luxembourg, Portugal and Slovakia and its market shares at national level for each ATC category is less than 30%. The Parties submit that Alvogen's total demand for flexible packaging for pharmaceuticals at EEA level is very small, given the number of other larger pharmaceutical companies active in the EEA. Alvogen does not therefore constitute a sufficiently significant customer to raise customer foreclosure concerns with respect to the upstream market for flexible pharmaceutical packaging.

3.2.2. Upstream markets

- (22) The total market size for flexible food packaging in the EEA was EUR 9 896 million in 2015 according to the Parties' submission. The Target's sales in the same year were EUR[...] million, corresponding to less than [0-5]% market share at EEA level. Even considering hypothetical national markets, the Target's market shares would be less than [0-5]% in each of Benelux, France, Germany and Finland. Although in Sweden the Target achieved a market share of [10-20]% in 2015, the Parties submit that this may overstate its competitive position since many customers appear to currently purchase flexible packaging from low cost countries such as India, Turkey and Poland. The Parties submit that these imports reinforce the argument that the market for flexible packaging is at least EEA-wide, if not global.

- (23) The Target's key competitors of flexible food packaging at EEA level are Amcor Flexibles ([20-30]%), Constantia Flexible ([5-10]%), Mondi Packaging ([5-10]%), Wipak ([0-5]%) and others, such as Huhtamaki, Sealed Air, Coveris, Clondalkin and Sudpack.
- (24) The total market size for flexible pharmaceutical packaging in the EEA was EUR 440 million in 2015. The Target achieved sales of only EUR [...] million in 2015 corresponding to [0-5]% market share at EEA level.
- (25) The Commission considers that it is unlikely that input foreclosure will arise from the transaction. The Target is not an important supplier of flexible food and pharmaceutical products and it faces sufficient strong competition in the upstream markets, so that customers in the downstream markets will have sufficient alternative sources of supply.
- (26) Therefore, in light of the above, the Commission considers that the transaction does not raise serious doubts as to its compatibility with the internal market and with the EEA Agreement with respect to the vertical relationships between the Parties.

4. CONCLUSION

- (27) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission