



EUROPEAN COMMISSION

DG Competition

***Case M.8374 - UAB  
RIMI LIETUVA/UAB  
PALINK***

Only the English text is available and authentic.

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

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Article 4(4)

Date: 12.4.2017



EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 12.4.2017  
C(2017) 2548 final

PUBLIC VERSION

**To the notifying party**

**To the Competition Council of the  
Republic of Lithuania**

**Subject: Case M.8374 – UAB RIMI LIETUVA/UAB PALINK  
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 Lithuania  
and Article 57 of the Agreement on the European Economic Area.<sup>2</sup>**

**Date of filing: 13 March 2017**

**Legal deadline for response of Member States: 5 April 2017**

**Legal deadline for the Commission decision under Article 4(4): 20 April 2017**

Dear Sir or Madam,

## **1. INTRODUCTION**

- (1) On 13 March 2017, 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. UAB Rimi Lietuva requests the operation to be examined in its entirety by the competent authority of Lithuania.
- (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

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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').

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 15 March 2017.
- (4) By communication of 23 March 2017, the Lithuanian Competition Council as the competent authority of Lithuania informed the Commission that Lithuania agrees with the proposed referral.

## **2. THE PARTIES**

- (5) UAB Rimi Lietuva ('Rimi', Lithuania) is part of Rimi Baltic group that is ultimately controlled by ICA Gruppen AB (Sweden). Rimi is a daily consumer goods retailer operating 56 grocery stores under the brand Rimi in Lithuania
- (6) UAB Palink ('Palink', Lithuania) is solely controlled by part REWE-Beteiligungs-Holding International GmbH (Germany) and is a daily consumer goods retailer operating 234 grocery stores under the retail brand IKI and IKI Express in Lithuania.

## **3. THE OPERATION AND CONCENTRATION**

- (7) The transaction involves the acquisition of sole control of Palink by Rimi (the 'Transaction'). Rimi and Palink are collectively referred to as the 'Parties'.
- (8) The sale and purchase agreement between the Parties was signed on 22 December 2016.
- (9) The intended concentration constitutes therefore a merger within the meaning of Article 3(1)(b) of the EU Merger Regulation.

## **4. EU DIMENSION**

- (10) This acquisition has an EU dimension within the meaning of Article 1 of the Merger Regulation since the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Rimi: EUR 10 822 million, Palink: EUR 596 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Rimi: EUR 10 792 million, Palink: EUR 596 million). They both do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (11) The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

## **5. 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 Lithuania in the markets for the retail for daily consumer goods and the procurement of daily consumer goods. The Transaction does not give rise to any affected markets outside of Lithuania.

## A Relevant product and geographic markets

### *Downstream - retail of daily consumer goods*

- (13) In the 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>3</sup> These retail outlets offer consumers a basket of fresh and dry foodstuffs and non-food household consumables sold in a supermarket environment.
- (14) The Commission considered retail outlets of the modern distribution channels to be 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>4</sup> These other retailers fulfil a specialist or convenience function, which makes them belong to a different product market<sup>5</sup> and the range and variety of products in traditional stores would be narrower than in hypermarkets and supermarkets.<sup>6</sup> For these reasons, they have been considered to belong to a different product market.<sup>7</sup>
- (15) 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 (radius of approximately 20 to 30 minutes driving time).<sup>8</sup>

### *Upstream - procurement of daily consumer goods*

- (16) The Commission has previously defined a separate product 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>9</sup> Furthermore, the Commission has previously considered whether a further distinction should be made between different sales channels, such as food-retailing, specialised trade,

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3 M.7224 – Koninklijke Ahold/Spar CZ, para. 9; M.5112 – Rewe/Plus Discount, para. 15; M4590 – Rewe/Delvita, para. 9-14; M.2604 – ICA Ahol J/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.

4 M.784 – Kesko/Tuko, para. 18-20, M.1221 – Rewe/Meinl, para. 10, M.5790 – Lidl/Plus Romania/Pius Bulgaria, para. 11-13.

5 M.5677 – Schuitema/Super de Boer Assets, para. 18.

6 M.3464 – Kesko/ICA/JV, para. 12.

7 M.5677 – Schuitema/Super de Boer Assets, para. 18.

8 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.

9 Most recently in case M.7224 – Koninklijke Ahold/Spar CZ, para. 10. See also Commission decision in the cases M.5122 – Rewe/Plus Discount, para. 21; M.1221 – Rewe/Meinl, para 83; and M.1684 – Carrefour/Promodes, para 24.

delicatessen, cash and carry stores and other wholesalers, drugstores and export trade but ultimately left the product market definition open.<sup>10</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, cakes and pastry; dairy products; non-alcoholic beverages; hot beverages, etc.<sup>11</sup> Moreover, the Commission has previously considered a further segmentation of the procurement market for daily consumer goods into 23 product categories.<sup>12</sup>
- (18) The Parties do not contest the above mentioned Commission's definition of the procurement market, but claim that Lithuanian procurement market should be divided into 18 distinct product categories because this would better reflect the (procurement) conditions in the Lithuanian market(s) faced by the undertakings concerned.
- (19) Regarding the geographic scope of the procurement market(s), in previous decisions, the Commission has consistently defined the geographic market for the procurement of daily consumer goods as national in scope.<sup>13</sup> The Commission found that consumer preferences mostly related to national products and suppliers generally negotiated on a national level.<sup>14</sup>
- (20) The Parties do not contest this geographic market definition, though they submit that, for some of the product categories identified, the geographic market definition could be wider. This would be the case for fresh meat, juices, personal care products, pet food and basic food. According to the Parties, the geographic scope of these latter product markets may include the Baltic countries, and possibly even Poland. The procurement market for fresh fruits and vegetables could be even broader.

## **B Assessment**

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

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<sup>10</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>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> The product categories were the following: (1) Liquids/drinks; (2) Hardware store products; (3) Perfumes/hygiene products; (4) Dry groceries; (5) Pharmaceutical products; (6) Perishable goods sold on a self-service basis; (7) Delicatessen ; (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.

<sup>13</sup> Most recently case M.7224 – Koninklijke Ahold/Spar CZ, para.12. See also case M.5112 – Rewe/Plus Discount, para. 22-23.

<sup>14</sup> See M.6588 – Koninklijke Ahold/Valk Holding, para. 18; M.1313 – Danish Crown/Vestjyske Slagterier, M.1221 - Rewe/Meinl., and M.3464 – Kesko/ICA/JV.

- (22) 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.

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

- (23) According to paragraph 17 of the Commission Notice on case referral in respect of concentrations,<sup>15</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.
- (24) In the case at hand, the Transaction will generate a number of affected markets in Lithuania.
- (25) With respect to retail markets, following the Commission's approach in past cases, the Parties defined 57 local markets based on catchment areas of 25-minute driving time centred around the Palink and Rimi stores. The transaction would give rise to horizontally affected markets in most of these local markets. In the affected local markets, the combined market shares of the Parties would range from 20% to 60.2%.
- (26) With respect to procurement markets, if such markets were considered as to be national in scope, horizontally affected markets would arise for several product groups, including eggs, wine and liquors, juices, water and mineral water and confectionery, with combined market shares on the affected markets ranging from 20% to 43% in Lithuania. For some of these procurement markets, the Parties submit that these may be broader than national in scope. These are the procurement markets for fresh meat, juices, personal care products, pet food and basic food were considered wider than national (i.e. pan-Baltic or pan-Baltic with an addition of Poland). Even when considering such a broader geographic scope for these procurement markets, the transaction would not result in horizontally affected markets.<sup>16</sup>
- (27) The Parties' activities also lead to vertically affected markets, as the retail of daily consumer goods is downstream of the procurement of daily consumer goods and the Parties' market combined shares exceed 30%, depending on the relevant product and geographic market definition.
- (28) In light of the above, the first requirement set forth by Article 4(4) of the Merger Regulation is met.

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

- (29) 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.

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<sup>15</sup> OJ C 56, 5.3.2005, p. 2.

<sup>16</sup> The market share for the procurement of juices, as estimated by the Parties, is above 20%. However, there are good reasons to believe that this market share is over estimated including the fact that the market size (i.e. the denominator) has been estimated considering only 100% juices, whereas in the Parties' sales (i.e. the numerator) all types of juice drinks as juices have been considered.

- (30) As indicated above, the markets for the retail of daily consumer goods contain strong local elements and have been defined as national or narrower than national in scope.
- (31) Therefore, the second legal requirement set out in Article 4(4) of the Merger Regulation is met.

*Conclusion on the legal requirements*

- (32) In view of the foregoing, the principle effects of the Transaction would be restricted to Lithuania. Further, the markets in question present all the characteristics of distinct markets.

*Additional factors*

- (33) 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.
- (34) Given the local 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. The case most likely will require investigative efforts at local level as the Parties are present not only in the largest cities but also in the rural areas. Therefore Lithuanian Competition Council is better suited to properly reach the markets involved, to understand its main characteristics and to deal with possible concerns.
- (35) Furthermore, a referral of the Transaction to the Lithuanian Competition Council satisfies the need to preserve the benefit of a "one-stop-shop" as there are no affected markets outside Lithuania. Accordingly, even in case of a referral of the Transaction, the benefit of the "one-stop-shop" would be preserved.
- (36) Finally, the Lithuanian Competition Council has a significant experience in assessing cases in the consumer goods area.<sup>17</sup>

**6. REFERRAL**

- (37) 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 a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations<sup>18</sup> (point 17) indicates that, in seeking a referral under Article 4(4), *“the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny”*, and that *“such indications may be no*

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<sup>17</sup> Decision No. 1S-110/2016 (merger in the fresh beef and pork processing markets); Decision No. 1S-190/2014 (merger in the vodka and bitters markets); Decision No. 1S-164/2014 (merger in the chocolate confectionery, juices, juice drinks and nectars in the retail markets as well as sugar confectionery and biscuits in the procurement markets); Decision No 1S-144/2014 (merger between wholesaler of various consumer goods and retailer of office supplies); Decision No. No. 1S-127/2013 (merger in the retail trade of dairy products).

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

*more than preliminary in nature...".* 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 Lithuania, and that the requested referral would be consistent with point 20 of the notice.

## **7. CONCLUSION**

- (38) For the above reasons, and given that Lithuania has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the Lithuanian Competition Council. 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*