



EUROPEAN COMMISSION
DG Competition

***Case M.8795 - BROOKFIELD /
SCHOELLER INDUSTRIES /
SCHOELLER ALLIBERT***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/03/2018

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EUROPEAN COMMISSION

Brussels, 15.3.2018
C(2018) 1659 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties

Subject: Case M.8795 — Brookfield/Schoeller Industries/Schoeller Allibert 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

Dear Sir or Madam,

- (1) On 08 February 2018, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004³ by which the undertakings Brookfield Asset Management Inc. ('Brookfield', Canada) and Schoeller Industries B.V. ('Schoeller Industries', the Netherlands) acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of REMA Investments B.V. ('REMA Investments', the Netherlands), the holding company of Schoeller Allibert B.V. ('Schoeller Allibert', the Netherlands) by way of purchase of shares and other means ('the Transaction').⁴ Brookfield, Schoeller Industries and Schoeller Allibert will be hereinafter referred as 'the Parties'. Brookfield and Schoeller Industries will be referred as 'the Notifying Parties'.

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

⁴ Publication in the Official Journal of the European Union No C 57, 15.2.2018, p. 5.

1. THE PARTIES

- (2) Brookfield is a Canadian global asset manager whose portfolio is focused on property, renewable power, infrastructure and private equity with over USD 250 billion of assets under management, either for its own account or for investors including pension funds, insurance companies, financial institutions and corporations. Brookfield is publicly listed on the New York Stock Exchange, the Toronto Stock exchange and on Euronext Amsterdam.
- (3) Schoeller Industries belongs to the Schoeller group, which is active in the areas of returnable packaging solutions, supply chain systems and intellectual property services.
- (4) Schoeller Allibert⁵ is a manufacturer of returnable plastic packaging for material handling. Schoeller Allibert offers a range of standard and tailor made returnable plastic packaging solutions including foldable containers, beverage crates and trays, handheld boxes, and pallets. Its customers are active in the agriculture, automotive, beverage, food, industrial manufacturing, pooling and retail sectors. Schoeller Allibert is currently indirectly controlled by J.P. Morgan Chase & Co. ('the Seller'), which holds 75% of the shares in and sole control over Schoeller Allibert via REMA Investments. The remaining 25% of the shares in Schoeller Allibert are indirectly owned by Schoeller Industries. Schoeller Industries does currently not own any rights that give it the possibility to exercise decisive influence over Schoeller Allibert.
- (5) On 4 January 2018, the Seller and Brookfield signed a share and purchase agreement, pursuant to which Brookfield intends to purchase 75% of the share capital of REMA Investments from the Seller. Schoeller Industries intends to retain its current shareholding of 25% and enter into a shareholder agreement ('SHA') with Brookfield.
- (6) Pursuant to the SHA, Schoeller Industries will have certain rights, which go beyond the usual rights protecting the financial interests of a minority shareholder. In particular, Schoeller Industries will have the right to [contractual relationship between the Parties]. Accordingly, the Transaction would result in the acquisition of joint control by Brookfield and Schoeller Industries over REMA Investments.
- (7) Schoeller Allibert as a joint-venture has sufficient own staff, financial resources and dedicated management for its operation and for the management of its business interests. Furthermore it is already operating on the market, is intended to continue to operate and does not have sale or purchase relationships with its parents. Therefore, the JV is full functional.
- (8) Accordingly, the Transaction constitutes a concentration pursuant to Articles 3(1)(b) and 3(4) of the Merger Regulation.

⁵ Schoeller Allibert was created as the result of the merger of Schoeller Arca Systems, and French Company Linpac Allibert in 2012. Schoeller Industries [...] of Schoeller Arca Systems when the merger was implemented. Its share in the new company was diluted to 25% as a result of the merger with JP Morgan as a majority owner with 75% of the shares.

2. EU DIMENSION

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶ (Brookfield: EUR [...] million, Schoeller Industries: EUR [...] million, Schoeller Allibert: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Brookfield: EUR [...] million, Schoeller Industries: EUR [...] million, Schoeller Allibert: 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

- (10) The Transaction will result in horizontal overlaps between Schoeller Industries and Schoeller Allibert because one subsidiary of Schoeller Industries, Schoeller Plast, and Schoeller Allibert are active in the same potential segment for returnable plastic transport packaging, notably stackable containers and stack nest containers.

3.1. Relevant markets

3.1.1. Product markets

- (11) Following the Commission's decisional practice, the segment for transportation packaging could be further divided based on (i) the packaging material, and/or (ii) the end-use industries.⁷ In addition, one could potentially further distinguish between returnable packaging and one-way packaging.
- (12) Following these principles, the Notifying Parties submit that Schoeller Allibert and Schoeller Industries are active in the segment for returnable plastic transport packaging for the following end-use industries: (i) agriculture, (ii) automotive, (iii) beverage, (iv) food processing, (v) industrial manufacturing, (vi) pooling services, and (vii) retail.
- (13) In another previous case, the Commission also considered an additional segmentation by type of plastic returnable product, namely in particular (i) stackable containers, (ii) stack-nest containers and (iii) bottle trays.⁸
- (14) Stackable containers are used primarily in the manufacturing industry for in-house materials/components handling. Stack-nest containers are mainly used for the handling and transport of food. They are available either with or without a cover in different sizes. Bottle trays are used for the transport of beverage bottles to the retail outlet and for the display of these bottles in the place of sale.

⁶ Turnover calculated in accordance with Article 5 of the Merger Regulation.

⁷ See decisions IV/M.603 – Crown Cork & Seal/Carnaud Metal Box, paras 9 and following, and COMP/M.2441 – Amcor/Danisco/Ahlstrom, para. 12.

⁸ See COMP/M.1813 – Industri Kapital (Nordkem)/DYNO, paras. 39 and 82-84.

- (15) Respondents to the market investigation have in general indicated that they source containers needed to fit to the respective conveyor system they are used for, the application and the specific features of usage (weight, width, height, etc).⁹ For example, customers selecting stackable containers for storage and transportation of industrial components do not use stack-nest containers rather designed for food transportation.
- (16) For the purpose of this decision, the Commission assesses the impact of the Transaction on the narrowest plausible, distinct, product markets, for stackable containers, stack-nest containers and bottle trays. The competitive assessment would not change if a wider market definition is adopted.

3.1.2. *Geographic markets*

- (17) Schoeller Allibert is active in most European countries, with some limited exceptions (such as Denmark) with plants in Germany, the UK, Latvia, Poland and the Netherlands. Schoeller Industries through Schoeller Plast is mainly active in Denmark and Germany from its plant in Denmark.¹⁰ The Notifying Parties submit that the relevant geographic market is at least EU-wide. This view is based on previous decisions in the packaging sector¹¹ and the fact that they see customers sourcing from different countries in Europe irrespective of the location of the plants they source from.
- (18) In M.1813 – Industri Kapital (Nordkem)/DYNO, the Commission considered a regional geographic market (Sweden, Norway, Finland) or even a national one, due to relevance of transport costs and the importance of proximity of the suppliers.
- (19) The market investigation did not provide a conclusive feedback on the scope of the geographic markets. Customers based in Germany indicated in general that they source their products from Germany whereas customers based in the Nordics may also buy from suppliers located in Germany or the UK, reflecting the lower density of local suppliers of returnable packaging in the Nordic countries.¹²
- (20) For the purpose of this decision, the Commission assessed the impact of the Transaction at national level and regionally for Sweden, Norway and Finland. The competitive assessment would not change under a wider geographic market definition.

⁹ See Replies to Q3 to questionnaire to customers.

¹⁰ Schoeller Plast is also active in Czech Republic, France, Hungary, Netherlands, Poland and the UK but with very low turnovers (below EUR [...] million in Hungary, Poland and the UK and below EUR [...] in the Czech Republic, France and the Netherlands).

¹¹ See COMP/M.5906 One Equity Partners/Constantia, COMP/M.5599 – Amcor/Alcan, para. 46 and following.

¹² See Replies to Q4-6 to questionnaire to customers.

3.2. Competitive assessment

- (21) Schoeller Allibert is the market leader in the EU for plastic returnable transportation packaging products with a market share around [20-30]%. The parties submit that Schoeller Plast achieved an EU-wide turnover of only approx. EUR [...] million. Considering an EU-wide total demand of EUR [...] billion for plastic returnable transportation packaging products, this amounts to an estimated share of Schoeller Plast in Europe of [0-5]%. A further segmentation of the market according to end-use industries would not result in significantly higher increments.
- (22) As regards a potential sub-segmentation by type of product, Schoeller Allibert's share in the EU is estimated between [20-30]% for both stackable containers and stack-nest containers, while Schoeller Plast's estimated share is less than [0-5]% in each of these markets. Important competitors include George UTZ with an estimated share of [20-30]% in both markets, as well as Bekuplast and SSI Schäfer with an estimated share of [10-20]% each. As regards bottle trays, Schoeller Allibert and Schoeller Plast estimate their respective share in the EU to be below [5]%.
- (23) In a Nordic market (Finland, Norway, Sweden), the combined market share of the merged entity would be [30-40]% with an increment of [5-10]% in stackable containers and [20-30]% with an increment of [0-5]% in stack-nest containers while the bottle trays market would not be affected. Competitive pressure would be exerted by different local players, such as Norplasta for example (approx. 5-10% in stackable and stack-nest containers respectively), and international companies such as George Utz (approx. [10-20]% in stackable and stack-nest containers respectively), Bekuplast (approx. 5-10% in stackable and stack-nest containers respectively) and SSI Schaefer (approx. 5-10% in stackable and stack-nest containers respectively).
- (24) At national level, there are no overlaps in national markets in the Nordics where Schoeller Allibert is present (Sweden, Norway, Finland) as Schoeller Plast is not active in these Member States. Conversely, Schoeller Allibert is not active in Denmark, where Schoeller Plast is present.
- (25) In Germany, Schoeller Allibert would estimate its shares between [20-30]% in both stackable containers and stack-nest containers with George UTZ, Bekuplast and SSI Schaefer being its most important competitors (the bottle trays market would not be affected).The Notifying Parties have not provided detailed market share figures as regards Schoeller Plast in Germany. They estimate however that Schoeller Plast's share would be in any case below 10% for both stackable containers and stack-nest containers.
- (26) Customers having responded to the market investigation did not express concerns as regards the impact of the transaction for stackable containers or stack-nest containers in the Nordic countries or in Germany. While they consider that Schoeller Allibert has become market leader through an acquisition policy, they also stated that Schoeller Plast played in general a minor

role in the competitive process and that they have alternative suppliers to source from.¹³

- (27) In the light of the above, the Transaction does not raise serious doubts as regards its impact on competition, either through non-coordinated or coordinated effects.

4. CONCLUSION

- (28) 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

¹³ See Replies to Q11-12 to questionnaire to customers.