Rewe/Adeg — Food for thought — Austrian markets for daily consumer goods

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1. Introduction

The Rewe/Adeg merger case concerned the Austrian markets for the retail sale of daily consumer goods and the respective procurement markets. It raised a number of interesting legal and economic issues. In particular, the Commission had to assess whether and to what extent discount chains effectively constrain full-range supermarkets in Austria. Also, the Commission clarified the circumstances under which strength on procurement markets may harm end-customers.

In 1999 the Commission had already taken a close look at the Austrian daily consumer goods markets when it assessed the merger between Rewe and Meinl. In the recent case of Rewe/Adeg the Commission found that the competitive landscape had changed in that discounters, in particular the discount chain Hofer (Aldi group), have become stronger than at the end of the 1990s. Apart from that, the Commission found that this time the target was a weak player. However, due to the parties’ strength in some Austrian districts the Commission was not able to rule out the possibility that their combined strength in these districts might influence Rewe’s national price setting and consequently overall price levels in Austria. Since Rewe offered commitments reducing local strength the Commission concluded that competition would not be significantly impeded on the retail market because of the merger.

Concerning procurement, the Commission found that Rewe was already a strong player in many procurement markets and that Adeg did not appreciably increase Rewe’s strength on the procurement side. In the case at hand, the Commission found that strength on the procurement side was likely to be beneficial for consumers since it could be expected that Rewe would have to pass on any improved purchasing conditions to consumers.

2. The parties and the operation

Rewe is a German-based group active in food and non-food wholesale and retail, travel and tourism in a number of European countries. In Austria, Rewe is active in food and non-food retail. It has only marginal activities in food and non-food wholesale in Austria. Apart from that, Rewe is active on the Austrian procurement markets as a purchaser of food and non-food products.

In Austria, Rewe operates 1,000 supermarkets under the brand name Billa, 108 hypermarkets under the brand name Merkur and 258 discount stores under the brand name Penny.

Adeg is active in food and non-food wholesale and retail in Austria. It has three own wholesale distribution centres and 19 cash & carry stores. In the retail market it operates 83 own retail shops, of which 15 are hypermarkets under the brand name Magnet. In addition, it supplies 582 shops that belong to independent Adeg merchants.

Pre-merger Adeg was owned by the independent Adeg merchants’ organisation AÖGen (37.6%), Edeka Chiemgau (37.5%) and Rewe, which held a minority shareholding of 24.9%.

The notified transaction consisted in the acquisition of sole control by Rewe over Adeg through the acquisition of shares. Rewe bought all of Edeka Chiemgau’s shares and part of AÖGen’s stake, corresponding to 12.6% of the equity. As a result, Rewe owned 75% of the shares, giving it sole control over Adeg. AÖgen retained 25% of the shares.

3. Retail market for daily consumer goods

The relevant product market

In recent cases concerning the Czech and Polish markets, the Commission defined the retail market for daily consumer goods as comprising ‘all modern distribution channels’ including supermarkets, hypermarkets as well as discount chains. In earlier cases, in particular Rewe/
The relevant geographic market

The geographic scope of retail markets for daily consumer goods is delineated by the boundaries

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(6) E.g. the Commission's decisions in Cases IV/M.778 Kesko/Tuke, paras 19, 20; COMP/M.1221 Rewe/Meinl, paras 12, 16; COMP/M.1684 Carrefour/Promodes, para 9 and M.3646 Kesko/ICA/JV, para 10 et seq., in which the product market definition was left open.

(7) The Commission found a similar effect in Case M.4533 SCA/P&G European Tissue Business, concerning the Austrian market for tissue paper: branded articles lose market shares if they do not react to the lower prices of private label products.
of a territory where the outlets can be reached easily by consumers. The Commission generally applies a radius of approximately 20 to 30 minutes driving time (8). However, the geographic market may be larger, for instance, where different local areas are connected in such a way that they result in overlapping circles (9). Under these circumstances competitive conditions typically do not differ from one area to another and therefore do not represent a separate geographic market.

In the Reeve/Meini case the Commission defined the Austrian retail market as national. The Commission argued that there are many overlapping areas and that the big market players cover the whole inhabitable part of Austria. Also, the Commission found that all competitors offered an identical or similar range of products throughout Austria, that they advertised their products country-wide and that prices did not differ appreciably from one part of Austria to another.

In the Reeve/Adeg case the investigation showed that most competitors set their prices uniformly for the whole company and for the whole of Austria, and that there are no significant regional or local differences in retail prices, which are comparable all over Austria. As a result, the Commission confirmed the findings of Reeve/Meini as far as the geographic scope of the market is concerned and considered that the geographic market for retail of daily consumer goods is national.

**Assessment**

**Market shares**

Based on a market survey by AC Nielsen (10) the market shares for 2007 on the Austrian market for the retail sale of daily consumer goods are as follows:

<table>
<thead>
<tr>
<th>Companies</th>
<th>Market share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reeve</td>
<td>29.7%</td>
</tr>
<tr>
<td>Spar</td>
<td>27.9%</td>
</tr>
<tr>
<td>Hofer</td>
<td>19.6%</td>
</tr>
<tr>
<td>Adeg</td>
<td>5.4%</td>
</tr>
<tr>
<td>ZEV Merchants</td>
<td>5.1%</td>
</tr>
<tr>
<td>Zielpunkt</td>
<td>4.5%</td>
</tr>
<tr>
<td>Lidl</td>
<td>3.2%</td>
</tr>
<tr>
<td>MPreis</td>
<td>2.7%</td>
</tr>
<tr>
<td>Any other business</td>
<td>&lt; 2%</td>
</tr>
<tr>
<td><strong>Total market value</strong></td>
<td><strong>€15 961 million</strong></td>
</tr>
</tbody>
</table>

Taking into account recent shop closures and sales of Adeg shops, Adeg’s overall market share falls below 5% (11). The revised combined market share for Reeve/Adeg was thus [30-35]%. In comparison to the Reeve/Meini case, the market shares of Reeve and its most important competitor Spar Austria remained stable while the market share of the hard discounters (Hofer and Lidl) increased significantly — between 1998 and 2007 from 11.7% to 23.8%.

Therefore, the combined market shares remained moderate after the merger, and there are a number of important competitors, so that the market shares as such do not give rise to competitive concerns.

**Low competitive pressure from Adeg**

The market investigation pointed towards particularly low competitive pressure from Adeg. The prices in Adeg shops were perceived as the highest in the market. A price comparison carried out by the Austrian Arbeiterkammer based on a basket of products showed that Adeg was the most expensive supermarket chain in Austria. This result is also confirmed by AC Nielsen data when comparing the prices of all products sold in Reeve, Spar Austria, Zielpunkt and Adeg own stores (i.e. with the exception of the independent merchants for which AC Nielsen did not have individual price data). As regards the independent Adeg merchants the data provided by Reeve indicates that most of the Adeg merchants follow the price recommendation by Adeg. It should also be noted that Adeg has lost half of its market share in Austria over the last ten years (12).

The fact that Adeg hardly constrained Reeve was further illustrated by the effect on Reeve’s sales in the event of Adeg shop closures. The turnover data submitted to the Commission showed that the sales of Reeve outlets scarcely increase after an Adeg shop closure.

Furthermore, Adeg shops are, with the exception of the Magnet hypermarkets, often local supply supermarkets in rural areas. In contrast, Reeve’s

(8) E.g. decisions in Cases IV/M.1085 Promodes/Cat- teau, para 14, COMP/M.1221 Reeve/Meini, para 18 and COMP/M.1684 Carrefour/Promodes, para 24.
(9) E.g. see COMP/M.1221-721 Reeve/Meini, para 18 and COMP/M.1684 Carrefour/Promodes, para 25.
(10) AC Nielsen data include non-food products.
Billa stores are supermarkets that are mostly located in urban areas. Rewe’s hypermarket chain Merkur or its soft discounter Penny Adeg could be regarded even less as comparable in terms of size, price and typically also location.

In view of the above, the Commission arrived at the conclusion that Adeg exercised low competitive pressure on Rewe in the Austrian retail market for daily consumer goods.

**Buyer power**

The merger leads to higher purchase volumes for Rewe. This can lead to improved buying conditions. Improved buying conditions may harm competition by giving a company the ability to behave independently of its competitors (\(^{(13)}\)).

The Commission’s market investigation did not support a significant purchasing advantage for Rewe. The investigation in fact showed that Rewe already had a strong buying position in Austria pre-merger and that the acquisition of Adeg did not lead to appreciable additional leveraging power on the part of Rewe. Most suppliers explicitly stated that they would not accept any demands for price reductions from Rewe and that they expected to be able to sell to other customers. Consequently, the Commission considered unilateral effects resulting from increased buying power unlikely. The situation concerning buyer power is further dealt with below in the context of procurement markets.

**Price increases due to strength at district level**

Despite finding a national geographic market, the Commission assessed the competitive situation at the level of the 121 Austrian political districts in order to establish whether Rewe might be able to avoid substantial market share losses following a price increase due to local strength of the combined entity. The Commission considered that, in the districts in which Rewe and Adeg are particularly strong, influence on national price setting by Rewe could not be ruled out since Rewe might be able to compensate market share losses due to price increases by the higher revenues in regions where it is particularly strong.

On this basis, the Commission applied a filter to determine the districts where the combined entity would be substantially stronger than at national level. According to this filter districts were deemed critical where the combined turnover share exceeded 45% with an increase in turnover due to

the merger, or where the combined turnover share was between 35% and 45% and with an overlap of at least 5% due to the merger.

It has to be emphasised that these ‘thresholds’ did not represent market shares and were not supposed to give guidance on whether the Commission considers market shares likely or unlikely to raise competition concerns. The purpose of the turnover share at district level was to establish the regions in which the merging parties are stronger than at national level. The thresholds were a tool to evaluate any risk of influencing price setting in the national market.

On this basis, the Commission found 24 critical districts. The 24 districts represented a very substantial part of Rewe’s retail turnover in Austria and corresponded to a population share of approximately 20%. The Commission therefore could not rule out in phase I of the merger procedure the possibility that strength at district level might influence national price setting since Rewe might be able to compensate market share losses in other districts by increased prices in the districts where it was particularly strong. The Commission therefore had serious concerns that the merger could cause a significant impediment of effective competition on the Austrian retail market.

**The commitments**

In response to the Commission’s findings in phase I, Rewe committed to reducing the combined turnover shares below the critical level in the affected districts through the divestiture of Adeg-owned shops in the relevant districts and to using its best efforts to make a sufficient number of Adeg merchants leave the Adeg network. In the event that too few merchants left the Adeg network, Rewe made a commitment to sell Rewe outlets instead. The Commission was satisfied that the general reduction of the position of Rewe and Adeg by the commitments eliminated all potential competition concerns due to unilateral effects on the retail market.

**Coordinated effects**

It should be mentioned that in the market investigation the Commission found very high transparency regarding the price setting of the different market participants. AC Nielsen provides detailed price information on a monthly basis for a very high number of products sold by the major market players. The Commission arrived at the conclusion that the merger would not result in any significant change regarding this price transparency. In addition, the market investigation made it clear that Adeg did not play a role in the retail market such that potential coordination between the two

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Market leaders Rewe and Spar Austria would be noticeably facilitated as a consequence of Adeg’s disappearance. Moreover, the merger would lead to increased asymmetry of the market shares of Rewe and Spar Austria, which reduced the incentive for possible coordination. Consequently, the Commission considered that the merger would not trigger coordinated effects on the retail market.

4. Procurement markets

The product market
Procurement markets cover the sale of daily consumer goods of producers to wholesale dealers, retailers (in particular supermarkets) or other companies. As in previous cases the Commission considered that separate procurement markets exist for different product categories, in order to take into account the fact that producers usually manufacture an individual product or an individual product category, and that therefore the flexibility to switch to alternative products for these producers is limited. In the Rewe/Meinl decision the Commission determined 19 product categories. The same categories were examined in the case of Rewe/Adeg.

The geographic market
The exact geographical market definition of the procurement markets could be left open, since — even on the basis of the narrowest (national) market definition — the merger did not impede effective competition.

Assessment
The Rewe/Meinl decision mentions a threshold of 22% market share for when a customer becomes unavoidable, a ‘must have’, for a supplier. When looking at the share of purchases by the retailers of daily consumer goods, Rewe was already pre-merger a ‘must have’ customer for many suppliers.

Despite this, in the market investigation many suppliers explicitly stated that the merger was not a source of concern for them since the acquisition of Adeg would not appreciably increase Rewe’s power. It should be noted that this was the case also for suppliers whose addresses the Commission received from competitors of the parties.

It is also worth noting that even those few suppliers or suppliers’ organisations that expressed concerns about the procurement side of the merger did not consider that prices for end-consumers would rise as a result of the merger or that choice for end-customers would be reduced. In fact, most respondents actually expected a strengthening of competition on the downstream market should Rewe be able to achieve better purchasing conditions.

This situation led the Commission to reiterate its position, as expressed in the guidelines on the assessment of horizontal mergers, that buyer power may be beneficial for competition where it lowers input costs without restricting downstream competition or total output. As long as powerful buyers are constrained to pass on the improvement of their purchasing conditions to the end-consumer, buyer power is beneficial for consumers.

That the acquisition of Adeg by Rewe did not restrict downstream competition was ensured by the commitments submitted. However, the Commission still had to assess whether the merger could lead to an output reduction or whether Rewe was likely to use its buyer power to foreclose its rivals on the retail market.

Output restriction
Buyer power can be harmful for end-customers when the pressure of a powerful buyer leads to a situation where suppliers prefer not to sell at a lower price but choose to supply lower quantities. As a consequence total output can be reduced and this can lead to price increases at the downstream level.

However, if end-customers have sufficient possibilities to switch to other suppliers the strategy of the powerful buyer is defeated since this buyer loses customers in the downstream market. In the Rewe/Adeg case a sufficient number of alternative supermarkets remain, which can serve additional customers; this also means that suppliers would be able to sell more to these alternative supermarkets and the total output in the market would remain the same. Therefore the Commission concluded that the merger would not give rise to competitive concerns as a result of potential output restrictions.

Foreclosure
Better purchasing conditions may enable a powerful buyer to undercut its competitors in the downstream market and drive these competitors out of the market. This can result in reduced competition at the downstream level and, as a consequence,

(16) Foreclosure is mentioned as a potential source of harm in para 61 of the Commission guidelines.
harm end-customers. In this context a so-called ‘waterbed effect’ is very often also mentioned. The waterbed effect assumes that purchase prices will increase for the powerful buyers’ competitors at the downstream level, since the suppliers would recoup the better purchasing conditions given to the powerful buyer by raising prices for the smaller buyers.

The waterbed effect is proven neither in reality nor in economic theory. In any event, several arguments speak against the ability for Rewe to drive its competitors out of the retail market. First of all, Rewe is already a strong buyer pre-merger. The acquisition of Adeg does not add much to Rewe’s pre-existing buyer power and the vast majority of suppliers stated that they would not give better purchasing conditions to Rewe following the merger. Moreover, while some respondents indicated that intensity of competition on the downstream retail market was likely to increase after the merger, there were no plausible indications that major competitors would have to exit the retail market in the foreseeable future.

Accordingly, the Commission concluded it unlikely that the merger would lead to competition concerns on the market for retail of daily consumer goods on the basis of increased buyer power in the procurement markets.

5. Conclusions

The Rewe/Adeg case illustrates that in an environment of rising food prices the Commission closely examines whether concentrations in the retail sector may lead to detrimental effects for the European consumer. It is determined to take necessary measures, which have to be tailored and proportionate regarding the particular case and the competitive environment in the country concerned, in order to prevent potential anti-competitive effects in this sector while at the same time preserving efficiencies that lead to better conditions for the consumer.