

Opinion of the Advisory Committee on mergers given at its meeting of 5 January 2016 regarding a draft decision relating to Case M.7567 Ball/Rexam

Rapporteur: Germany

(2016/C 107/03)

Operation

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 (the 'Merger Regulation').

Union Dimension

2. The Advisory Committee agrees with the Commission that the notified operation has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

Product Market

3. The Advisory Committee agrees with the Commission's definitions of the relevant product markets as stated in the draft decision.
4. In particular, the Advisory Committee agrees with the Commission's conclusions that for the purpose of assessing the present operation:
 - (a) Beverage cans constitute a separate market from other forms of beverage packaging solutions.
 - (b) Various can sizes and can types belong to the same market even though they constitute differentiated products within this market.
 - (c) Can ends and can bodies form part of the same product market.
 - (d) Aluminium and steel cans belong to the same product market.

Geographic Market

5. The Advisory Committee agrees with the Commission's definitions of the relevant geographic markets as stated in the draft decision.
6. In particular, the Advisory Committee agrees with the Commission's conclusions that for the purpose of assessing the present operation, the relevant geographic markets consist of regional clusters of 700 km catchment areas around individual customer filling locations (hereinafter 'regional clusters') where the competitive conditions are sufficiently homogeneous. Those regional clusters comprise 700km catchment areas around individual customer filling locations located in each of the following regions: (i) the UK and Ireland; (ii) the Benelux (Belgium, Luxembourg and the Netherlands); (iii) Central Europe (Austria and Germany); (iv) France; (v) Italy; (vi) Iberia (Spain and Portugal); (vii) North-East Europe (Czech Republic, Slovakia, Poland Lithuania, Estonia and Latvia); (viii) South-East Europe (Hungary, Slovenia, Croatia, Romania, Bulgaria, Greece and Cyprus); and (ix) the Nordics (Denmark, Norway, Sweden, Finland and Iceland).

Competitive Assessment

7. The Advisory Committee agrees with the Commission's assessment that the notified operation is unlikely to give rise to a significant impediment of effective competition in the potential markets for aluminium bottles.
8. The Advisory Committee agrees with the Commission's assessment that the notified operation leads to a significant impediment to effective competition in the relevant markets for beverage cans.
9. In particular, the Advisory Committee agrees with the Commission's assessment that the notified operation leads to a significant impediment to effective competition in:
 - (a) the cluster of catchment areas around individual customer filling locations in Central Europe: Germany and Austria;
 - (b) the cluster of catchment areas around individual customer filling locations in the Benelux;
 - (c) the cluster of catchment areas around individual customer filling locations in France;
 - (d) the cluster of catchment areas around individual customer filling locations in Italy;

- (e) the cluster of catchment areas around individual customer filling locations in Iberia;
 - (f) the cluster of catchment areas around individual customer filling locations in North-East Europe: Poland, Czech Republic, Slovakia, Lithuania, Estonia and Latvia;
 - (g) the cluster of catchment areas around individual customer filling locations in South-East Europe: Hungary, Slovenia, Croatia, Romania, Bulgaria, Greece and Cyprus;
 - (h) the cluster of catchment areas around individual customer filling locations in the Nordics: Denmark, Norway, Sweden, Finland, and Iceland;
 - (i) the cluster of catchment areas around individual customer filling locations in the UK and Ireland.
10. The Advisory Committee agrees with the Commission that the final commitments offered by the notifying party on 3 December 2015 address the competition concerns identified by the Commission.
11. The Advisory Committee agrees with the Commission that, subject to the full compliance with the final commitments offered by the notifying party on 3 December 2015, the notified operation is not likely to significantly impede effective competition in the internal market or in a substantial part of it.

Compatibility with Internal Market

12. The Advisory Committee agrees with the Commission's view that the notified concentration should be declared compatible with the internal market and the EEA Agreement in accordance with Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.
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