ACQUISITIONS (RETAIL FOOD): THE REWE / MEINL CASE

Subject: Acquisitions

Industry: Retail food
(Implications for other industries)

Parties: Julius Meinl AG
Rewe-Zentralfinanz eG and Rewe Zentral AG

Source: Commission Statement IP/99/83, dated February 3rd, 1999

(Note. In many concentration cases, the parties secure Commission approval by some kind of divestiture of their interests, to ensure fair competition. In the present case, there is an element of divestiture; but it is more like a re-shuffling of the interests in such a way as to balance the various retail outlets among the retail competitors.)

Following a four-month in-depth investigation, the Commission decided to approve the Rewe / Meinl merger following significant changes proposed by the parties. The merger as originally notified included the acquisition of sole control of Julius Meinl AG (Meinl) by Rewe-Zentralfinanz eG and Rewe ZentralAG (Rewe). To avoid a prohibition decision, the parties proposed to limit their operation to the acquisition of 162 Meinl outlets by Rewe. On the basis of the modified operation Meinl will continue to be active in Austria. The Commission had come to the conclusion that the concentration would create a dominant position on the Austrian food retail market and would also create or strengthen dominant positions on nine Austrian procurement markets for daily consumer goods. To eliminate the competitive concerns Rewe and Meinl committed themselves to limiting the operation to the acquisition of 117 Meinl outlets outside Eastern Austria (that is, Vienna, Lower Austria and Northern Burgenland) and of 45 Meinl outlets in the whole of Austria which will be converted into drugstores. The Commission came to the conclusion that this commitment would remedy the competition concerns on the Austrian food retail and procurement markets and therefore approved the operation.

Rewe is the leading food retailer in Germany. In Austria, Rewe has traded since 1996 through its BML ("Billa") subsidiary. Billa operates a food retail chain including hypermarkets (Merkur), supermarkets (Billa), smaller self-service shops (Emma) and discounters (Mondo) as well as a drugstore chain (Bipa). Billa already is the leading food retailer in Austria. Meinl is an Austrian food retail chain which operates hypermarkets (PamPam), supermarkets (Julius Meinl and Meinl Gourmet) and discounters (Jeee). Not involved in this operation are Meinl Bank AG, Julius Meinl International AG, which is engaged in food retail outside of Austria, and Meinl Austria Industrie GmbH, which comprises the group's production business. The proposed concentration affects the food retail market and several procurement markets for daily consumer goods in Austria. Rewe/Billa is already the leading operator on the Austrian food retail market. Through the proposed concentration its market share would increase from 30% to at least 37% while its closest

competitor (Spar) has a market share of 26%. Furthermore, Rewe/Billa already has specific strengths as compared to its competitors such as in particular its market leadership in the key region of Eastern Austria, the best-developed chain of highly-productive large outlets, a strong position in urban centres and the advantage of a centralised structure.

Through the proposed concentration Rewe/Billa would, in addition to increasing its market share, further strengthen these specific competitive advantages. The proposed concentration would also further increase the existing high entry barriers to the Austrian food retail market. Therefore, the Commission concluded that the proposed concentration would have created a dominant position in the Austrian food retail market. The supply side in the Austrian procurement markets is much less concentrated than the demand side. This is particularly true for the food retail market channel, which is by far the most important one for food suppliers. The Commission's investigation established that after the concentration suppliers on the largest number of markets defined would depend on sales to Rewe/Billa/Meinl for an average of 29% of their turnover. For some product groups the degree of dependency would even be significantly higher. Other structural competitive advantages of Rewe/Billa, such as the centralised buying structure and the strong position in Eastern Austria, add to this high degree of dependency. The proposed concentration would therefore also have created dominant positions on several procurement markets.

In the course of the proceedings the parties committed themselves to limiting the operation to the acquisition of 137 Meinl outlets outside Eastern Austria, of which 20 will be converted into Bipa-drugstores, and to the acquisition of 25 outlets in Eastern Austria, all of which Rewe will also convert into Bipa-drugstores. Meinl will continue to run its remaining Eastern Austrian outlets as supermarkets and as hypermarkets. As a result of this commitment Rewe/Billa will acquire 34% of Meinl's food retail activities in terms of turnover. This will considerably limit the addition of market shares on the Austrian retail market, since the increase will be around 2.5% instead of 7% based on the concentration as originally notified. Given that none of the outlets acquired in Eastern Austria will be run as food retail stores, Rewe/Billa will not further strengthen its existing strong position in this key region. Meinl will remain active as an actual competitor there. Furthermore, Meinl will be able to invest the proceeds of the sale of its Western Austrian outlets into its Eastern Austrian business, thus improving its competitive situation in this region. Reducing Rewe/Billa's accrued market share in the retail market will also reduce the concentration's bearing on the dependency of suppliers in the procurement markets. Indeed, the demand potential added through the modified concentration will no longer have a significant impact on Rewe/Billa's position on the procurement markets. Finally, Rewe/Billa will not increase its strong position in Eastern Austria. Moreover, Meinl will remain active on the procurement markets as an alternative customer for suppliers, in particular because of its strong presence in the area of Vienna. For the above reasons, the Commission has concluded that the parties' commitments will prevent the creation of a dominant position on the Austrian retail market as well as the creation or strengthening of dominant positions on nine Austrian procurement markets for daily consumer goods and has therefore approved the concentration.