ACQUISITIONS (RETAIL CHAINS): THE CARREFOUR / PROMODES CASE

Subject Acquisitions
National laws
Market shares

Industry Retail chains

Parties Promodes
Carrefour
CORA

Source Commission Statement IP/00/74, dated 25 January 2000

(Note. Three important features of this case are, first, the Commission's decision to proceed to an in-depth analysis of a concentration; second, the Commission's concern about dominance of the market - or, at least, relative dominance - in individual Member States; and, third, the Commission's referrals to the Member States concerned for the analysis of the problems revealed in the Commission's own "first-stage" investigation.)

The Commission has decided to refer the analysis concerning the acquisition of Promodes by Carrefour to the national competition authorities in France and Spain. The referrals concern a number of local retail markets. "We have made sure that our referral decisions cover all the local areas where the operation is susceptible to create competitive problems affecting the choice of the end-consumer," Mr. Mario Monti, the Commissioner for Competition, has explained. The Commission has also authorised the other aspects of the planned acquisition, subject to a certain number of undertakings. Carrefour has undertaken to remedy certain problems identified on the supply markets, in particular by removing all existing links with its direct competitor, CORA.

The concentration between Carrefour and Promodes will mainly affect the French and Spanish markets. In France, the new group (with 27%) will be market leader on the retail market. There will be a 10% gap between them and their closest competitors, Leclerc (around 17%) and Intermarché (around 15%). Casino and Auchan both have around 13%, System U around 6% and CORA 5%. In Spain, Carrefour/Promodes will have combined market shares of approximately 26%, that means three times larger than the nearest competitors, Eroski, Auchan and Hipercor (each around 8%). In addition, the new group will be particularly strong in large service ares, that is, hypermarkets, which are the most profitable form of distribution in Spain.

According to the Commission's information, Carrefour/Promodes could obtain particularly strong market positions in certain local retail markets. As in previous cases, the Commission has referred the analysis of these local areas to the competent authorities of France and Spain, following their request. It is the understanding of the Commission that in those areas, where the new group's

market position will not be sufficiently counter-balanced by the presence of other traders, the respective overlaps creating competitive concerns will be removed by the divestiture of sales outlets.

As to the supply markets, the Commission has concluded that, although Carrefour/ Promodes will become the market leader in France and Spain, the market position obtained by the new group will not lead to the creation of dominance. Nevertheless, to avoid any risk with regard to the creation of a dominant position on the supply markets, it is essential to eliminate all existing doubts concerning the competitive efficiency of the other traders on the retail market. In this respect, the Commission raised concerns about Carrefour's 42% participation in its competitor, CORA. Although at present Carrefour does not control its rival, it could use its minority stake in order to block important decisions (such as, for example, the increase of CORA's share capital) and could ask to get access to the strategic business information of the company. Generally speaking, the existing doubts concerning CORA's future threaten to block its further development on the market. The Commission therefore concluded that Carrefour's influence on CORA would have an anti-competitive effect on the market.

To remove the Commission's concerns, Carrefour undertook to sell its stake in CORA to one or several independent competitors. Pending the execution of the divestiture, the management of Carrefour's participation will immediately be conferred upon a trustee in order to exclude any influence of the new group on its competitor. Finally, the parties undertook to take certain steps to address concerns raised by several suppliers about the short- and long-term consequences of the concentration. With regard to small and medium-sized enterprises (SMEs), Carrefour has undertaken to abstain from modifying any supply-contracts, which are in force on the day of the Commission's decision, for the time of their duration. Carrefour has also undertaken not to break off unilaterally its commercial relationships with certain producers supplying both Carrefour and Promodes, for a period of three years from the date of the Commission' decision. The Commission has taken note of these undertakings, the implementation of which will be subject to regular reports by Carrefour.

In France, the procedure will take a maximum of six months. The Minister of Economic Affairs will have to decide within two months whether or not to consult the Competition Council, who will then have to issue an opinion within four months. Afterwards, the Minister of Economic Affairs will have a two days in which to take his final decision. In Spain, the Spanish Department of Competition has one month to decide whether or not to refer the matter to the Tribunal for Competition affairs. The latter will have to give its opinion within three months. The Spanish Government, on the basis of a proposal of the Minister for Economic Affairs, will have to take its final decision after three months at the latest.

In any event, both the French and the Spanish Competition authorities, according to the European Community Merger Regulation (ECMR), will have to publish their report or issue the conclusions of their examination at the latest four months after the date of the Commission's referral decision. ■