ACQUISITIONS (PACKAGING): THE TETRA LAVAL / SIDEL CASE

Subject: Acquisitions
Conditions

Industry: Packaging; cartons

Parties: Tetra Laval
Sidel

Source: Commission Statement IP/03/36, dated 13 January 2003

(Note. This case, which has proceeded with relative speed, shows what may happen if the Court annuls a decision by the Commission to prohibit a merger. The Commission has to reopen the case; and in this instance it did so, with a favourable outcome for the parties – subject to certain conditions on licensing.)

The Commission has decided to clear the acquisition of French plastic packaging machines maker Sidel by Swiss-Swedish carton packaging leader Tetra Laval. The decision follows a new investigation in the light of the Court of First Instance's annulment of the Commission's decision of 30 October 2001, which had prohibited the acquisition. The clearance is conditional on the fulfilment by Tetra of a commitment to license its upcoming "Tetra Fast" stretch blow moulding (SBM) technology, which is currently being tested.

Following the judgment of the Court of First Instance (CFI) of 25 October 2002 annulling the Commission's prohibition decision of 30 October 2001, the Commission was required to make a new assessment of the transaction. Under the Merger Regulation, the Commission is required to reassess a transaction if its decision is annulled by the CFI.

Tetra Laval BV is the world's leader for carton packaging with an overall market share in Europe of approximately 80 percent in aseptic carton packaging. Sidel SA is the leading manufacturer of plastic polyethylene terephthalate (PET) packaging equipment and in particular stretch blow-moulding (SBM) machines. SBM machines produce finished PET plastic bottles by stretching and blowing the PET preforms in a mould, which gives the bottle its shape (stretch-blow moulding). The operation concerns the market for the packaging of liquid food products. There are four main packaging materials for such liquids: carton and plastic (including PET and HDPE high-density polyethylene) are two of these, the other two being cans and glass.

The Commission's second investigation of the Tetra Laval/Sidel deal focused on addressing the various points raised in the CFI's Judgment, which required further investigation. On the basis of the Court's ruling, the Commission had to examine the impact of the transaction on the wider SBM machines markets rather than the narrower markets for SBM machines by end-use.

However, the Commission acquired evidence about a new SBM technology called "Tetra Fast", which Tetra has been developing and which had not been analysed in the previous decision. Although this Tetra Fast technology is still being developed it has reached field-testing stage and therefore gives rise to serious doubts as to the creation of a dominant position on wider SBM markets. This is because, in combination with Sidel's clear technological and other advantages, it seems to be capable of having a decisive impact on the merged entity's future positions on SBM markets.

But this concern was removed by Tetra's commitment to license its Tetra Fast technology. The Commission took note of further commitments regarding Tetra's assignment of proprietary SBM technology unrelated to "Tetra Fast" and regarding the PET pre-forms market which Tetra undertook not to re-enter for the next five years. Evaluating the information available after the new investigation within the terms of the CFI's Judgment, the Commission could no longer conclude that the operation would create a dominant position, other than as related to the "Tetra Fast" technology.

On 8 January 2003 the Commission lodged an appeal against the CFI's annulment of its prohibition decision of 30 October 2001 and subsequent separation decision of 30 January 2002 (IP/02/1952). Today's clearance decision, which takes account of the Judgment of the CFI, could be affected by the outcome of the Commission's appeal and by a possible re-examination of the Commission's earlier decision by the Court of Justice or the CFI, in the event of the matter being referred back to it by the Court of Justice.

Background

In October 2001, the Commission prohibited the deal on the grounds that the combination of Tetra Laval with Sidel would: 1) lead to the creation of a dominant position in the European market for PET packaging equipment used for sensitive products and; 2) to the strengthening of a dominant position in aseptic carton packaging equipment and aseptic cartons in Europe. Aseptic packaging is used for long life liquids, which do not require chilled distribution. This decision was annulled by the CFI's Judgment of 25 October 2002. The annulment of the prohibition decision triggered a new re-examination, which started on 18 November 2002 after Tetra provided the Commission with updated information.

The proposed acquisition was first notified to the Commission on 18 May 2001 following a takeover bid for Sidel on 27 March 2001 through Tetra's French subsidiary Tetra Laval. The existence of the Tetra Fast technology is a new element, which has surfaced since the annulled Decision. Conventional stretch blow moulding involves using a compressor generating approximately 40 bar of pressure for blowing the bottle from the heated pre-form. The Tetra Fast technology, by contrast, is based on the concept of using a hydrogen/oxygen (explosive) chemical reaction to form PET bottles, instead of using compressed air. The explosive process has a sterilising effect and is capable of achieving substantial cost savings. ■