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Competition - Portugal

Conditions of Hypermarket Merger Preserve Choice of Retailer and Retail Format

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Transaction

On December 27 2007 the Competition Authority approved the acquisition of Carrefour Portugal SA by Sonae Distribuição SGPS SA . The acquisition was subject to certain conditions and remedies.⁽¹⁾

The transaction involved the acquisition of 12 Carrefour hypermarkets, 13 licences to open new hypermarkets and eight petrol stations. The transaction involved 16 local retail markets for consumer goods.

Market Definition

In defining the relevant market, the authority followed the European Commission guidelines and made the necessary adjustments to account for specific features of the Portuguese economy.

After distinguishing between traditional specialized stores and whole-range retail chains (ie, hypermarkets, supermarkets and discount stores), the authority debated whether a narrower market definition would be more appropriate, given that all of the acquired assets were hypermarkets. The authority's preference for defining relevant markets from a demand perspective meant that attention focused on the characteristics that affect demand behaviour, namely:

- the outlet features that drive consumers' decisions on where to shop;
- households' capacity to switch from hypermarkets to supermarkets or discount stores; and
- the capacity of the three formats to meet different household needs (termed 'shopping missions').

Sonae submitted economic evidence and studies to support the view that hypermarkets, supermarkets and discount stores belong to the same product market, notwithstanding certain differences in the range and nature of products supplied by hypermarkets and discount stores. Econometric analysis has shown that firms which carry out retail activity in any of the three distribution formats are competing with each other.

Sonae also demonstrated that a broader market definition was consistent with the views of the European Commission and other national competition authorities. The authority accepted Sonae's arguments and defined the relevant product market as the market for daily consumer goods, including hypermarkets, supermarkets and discounters.

On the question of geographic scope, the authority considered that elements of competition exist at national and local levels in the industry. The local scope of the market was defined by large catchment areas within a radius of 30 minutes' travelling time because the transaction mainly involved the acquisition of hypermarkets, which have a high capacity for attracting consumers. Furthermore, as the overlapping catchment areas of Carrefour's hypermarket outlets created a chain of substitution, the geographic scope of some of the relevant markets was enlarged in order to group together several local markets.

Remedies

The authority focused on an analysis of six local markets for food retail in which it considered that there was

a risk of a dominant position being created or reinforced, resulting in a significant impediment to competition.⁽²⁾

In order to address the authority's objections to the proposed transaction, Sonae must:

- sell two previously owned supermarkets (or two Carrefour hypermarkets), as well as one of Carrefour's licences to open a new hypermarket;
- not exceed 50,000 square metres of food-retailing space in one of the relevant markets within three years of the acquisition being authorized;
- not acquire licences to open new retail outlets in some of the analyzed markets for a year after the authority's decision; and
- reduce the food-retailing area of its controlled outlets in several local markets or convert food-retailing areas into non-food retailing outlets (and not reconvert them).

Comment

This is the first time that the authority has imposed structural remedies following a first-phase investigation, which shows its increasing efficiency in dealing with strict timetables when analyzing complex cases. The assessment was a challenging procedure in which economic studies were thoroughly discussed and third parties, such as competitors and suppliers, intervened. The transaction, notified on August 2007, was decided after five months of extensive analysis - an excellent achievement for the authority in terms of the concentration's procedural duration.

The structural and behavioural remedies ultimately imposed as conditions of clearance are designed to ensure that (i) local dominant positions are not created, and (ii) consumers retain their capacity to choose not only between different retailers, but also between different formats of grocery retailing (ie, discount stores, supermarkets and hypermarkets).

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Endnotes

(1) Case 51/2007 - SONAE/CARREFOUR. The authority's report (in Portuguese) is available at http://www.autoridadedaconcorrenca.pt/download/2007_51_final_net.pdf.

(2) A summary of the remedy package (in Portuguese) is available at http://www.autoridadedaconcorrenca.pt/download/comunicado2007_22.pdf.

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