

DETERMINATION OF MERGER NOTIFICATION M/18/040 - NOVOLEX (CARLYLE)/WADDINGTON

Section 21 of the Competition Act 2002

Proposed acquisition by Novolex Holdings, LLC of sole control of The Waddington Group, Inc.

Dated 08 June 2018

Introduction

1. On 16 May 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Novolex Holdings, LLC (“Novolex”), which is controlled by funds managed by affiliates of The Carlyle Group (“Carlyle”), would acquire sole control of The Waddington Group, Inc. (“Waddington”) from Newell Brands Inc. (“Newell”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction involves the acquisition by Novolex of all of the issued and outstanding share capital or other equity interests of the following entities: (i) Waddington, (ii) Eureka CaterWare B.V., a company organized under the laws of the Netherlands, and (iii) Polar Plastic Company, a Canadian (Nova Scotia) unlimited liability company,¹ pursuant to an equity purchase agreement (the “EPA”) dated 2 May 2018 between Novolex and Newell.

The Undertakings Involved

The Acquirer – Novolex, Carlyle

Novolex

3. Novolex, headquartered in South Carolina in the United States, is a manufacturer of paper and plastic flexible packaging products for a variety of applications, including food contact wraps and bags, carryout bags and institutional trash can liners. Novolex also manufactures specialty plastic bags, films, liners, and lamination products for a broad range of packaging and other commercial/industrial applications. Its customers are primarily in the foodservice, grocery, retail and commercial markets. As noted above, Novolex is controlled by funds managed by affiliates of Carlyle.

¹ Eureka CaterWare B.V. and Polar Plastic Company form part of the Waddington Group. It should be noted that all entities in the Waddington Group are being acquired as part of the Proposed Transaction [...].



4. Novolex operates a number of packaging brands, such as Hilex Poly, Duro Bag, Bagcraft Packaging, De Luxe Packaging, International Converter, Shields, General Packaging and Heritage Bag.
5. Novolex's only sales in the State are laminated facing products for foam insulation (multi-layer laminates of paper and foil).
6. For the financial year ended 31 December 2017, Novolex's worldwide revenue was approximately €[...], of which approximately €[...] was generated in the State.

Carlyle

7. Carlyle, headquartered in the United States, is a limited liability partnership listed on the NASDAQ stock exchange. Carlyle is a global alternative asset manager which manages funds that invest globally across four investment categories:
 - Corporate private equity (e.g., buyouts and growth capital);
 - Real assets (e.g., real estate, infrastructure and renewable resources);
 - Global market strategies (e.g., structured credit, mezzanine, distressed, hedge funds and middle market debt); and
 - Investment solutions (e.g., private equity and related activities).
8. [...] portfolio companies currently controlled by funds managed by affiliates of Carlyle generated turnover in the State in the most recent financial year.²
9. For the financial year ended 31 December 2017, Carlyle's worldwide revenue was approximately €[...], of which approximately €[...] was generated in the State.

The Target - Waddington

10. Waddington, headquartered in Covington, Kentucky in the United States, manufactures and sells rigid plastic food packaging products, including foodservice disposables (tableware, drinkware, servingware, and cutlery) and plastic containers used to package food products such as cake, salad, and deli products. Waddington, through its Eco Products division, also sells eco-friendly disposable plastic cups, plates, utensils and short-term food containers.
11. Waddington operations can be split into four separate divisions, namely:

² These portfolio companies were controlled by funds managed by affiliates of Carlyle as of 1 May 2018.



- Waddington North America (“WNA”), the division of Waddington in the United States that offers a broad range of disposables for the foodservice, catering, bakery, processing deli and restaurant sectors.
 - Polar Pak, a division of Waddington based in Canada that manufactures similar products to WNA for similar end-users.
 - Waddington Europe, represents Waddington companies in Europe. It comprises Eureka CaterWare B.V., Holfeld Plastics Limited, Par-Pak Europe, DeltaForm Limited and Chiltern Thermoforming Limited (UK).
 - Eco-Products, based in Colorado in the United States, is a brand and thought innovator in the green packaging space. It offers a range of sustainable (e.g., recyclable and/or compostable) disposable products including, for example, food containers, cold cups, hot cups, and coffee cups.
12. Waddington is active in the supply of rigid plastic packaging in the State, through its subsidiaries [...]. Waddington is not involved in the supply of any other product in the State.
13. For the financial year ending 31 December 2017, Waddington’s worldwide revenue was approximately €[...], of which €[...] was generated in the State.

Rationale for the Proposed Transaction

14. The parties state in the notification:

“The Proposed Transaction is an opportunity for Novolex to expand its product portfolio to include a complementary range of products that Novolex does not offer today.”

Third Party Submissions

15. No submission was received.

Competitive Analysis

Horizontal Overlap

16. There is an overlap in the business activities of the parties in the State in so far as both parties are active in the supply of packaging products. However, the parties supply different types of packaging products to different customers in the State. As noted above, Novolex’s only sales in the State are laminated facing products for foam insulation (multi-layer laminates of paper and foil). Waddington does not produce or sell this type of packaging product either in the State or elsewhere.



17. The European Commission has found in a number of previous decisions that the European packaging industry does not constitute one market but is divided into several markets based on a combination of the packaging material and the use made of the packaging product.³ The Commission has also conducted competitive assessments of mergers relating to specific product categories without coming to a definitive view on the precise product market definition.⁴
18. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant markets.
19. In the present case, the only product Novolex supplies in the State is laminated facing packaging products that are produced from paper and foil using a laminator machine. These packaging products are supplied to manufacturers of insulation foam such as [...] and [...]. Waddington, on the other hand, supplies only rigid plastic packaging in the State, such as collation trays, lids, plastic platters, etc. Waddington's customers in the State are primarily in the foodservice and hospitality industry.
20. The Commission notes that the packaging products supplied by the parties in the State have different end uses, are produced using different materials and processes, have different target customers and are not substitutable. Accordingly, the Commission considers that the Proposed Transaction does not give rise to any horizontal competition concerns.

Vertical relationship

21. There is no identifiable vertical relationship between the parties in the State. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns.

Conclusion

22. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

23. The EPA (referred to in paragraph 2 above) contains a number of restrictive obligations on Newell (i.e. the vendor) and Novolex. These include non-compete and non-solicitation clauses.⁵ None of these restrictive obligations exceeds the maximum

³ See para 8 of the *IV/M.1400 - REXAM / PLM*. Also see *IV/M.1400 Huhtamaki OYJ/Packaging Industries Van Leer*.

⁴ See for example *M/16/051 SAICA/Ridgmont/Americk*, where the Commission considered a number of separate product markets within the broader packaging products sector, focusing in that case on light cardboard boxes/printed folding cartons. Similarly in *M/14/034 ESNT (Essentra)/Blue NewCo 1 (Clondalkin)* and *M/11/008 Clondalkin Group/Catalent* the Commission considered the overlap between the parties in relation to packaging material and end use.

⁵ Sections 5.16 and Section 6.8 of the EPA.



duration acceptable to the Commission.⁶ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction in so far as they relate to the State.

Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of

⁶ In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



the proposed acquisition whereby Novolex Holdings, LLC would acquire all of the issued and outstanding share capital or other equity interests of the following entities: (i) The Waddington Group, Inc., (ii) Eureka CaterWare B.V., and (iii) Polar Plastic Company, will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Patrick Kenny
Member
Competition and Consumer Protection Commission