

## Case summary

26 November 2020

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### **Bundeskartellamt clears the acquisition by the XXXLutz group of 50% of the shares in Roller GmbH & Co. KG and Tejo Möbel Management Holding GmbH & Co. KG only subject to conditions**

Sector: Furniture retail

File number: B1-195/19

Date of decision: 25 November 2020

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With its decision of 25 November 2020 the Bundeskartellamt has cleared plans by the Austrian XXXLutz group to acquire 50% of the shares in Roller GmbH & Co. KG, Gelsenkirchen, and Tejo Möbel Management Holding GmbH & Co. KG, Goslar, via Mann Mobilia Beteiligungs GmbH, Würzburg, which is controlled by the XXXLutz group, and so to gain joint control of the aforementioned companies. Via Tessner Holding KG, Goslar, the Tessner group, which is exclusively controlled by Mr Hans-Joachim Tessner, will still hold 50% of the shares in the target companies. The merger was cleared subject to the condition that 23 outlets of the purchaser and target company in competitively problematic market areas be sold to third parties. The proposed acquisition can only be implemented once the Bundeskartellamt has established that the conditions have been fulfilled. For this purpose the parties have to prove the suitability of the actual purchaser(s) of the outlets for sale and its/their concept for continuing the business.

The Bundeskartellamt's examination of the merger was limited to the furniture retail markets in Germany affected by the merger because the examination of the procurement markets remained within the competencies of the European Commission. As an exception the examination of the merger by the two above-mentioned authorities was necessary because the project would have had to be notified to the European Commission due to the turnover of the parties concerned. As the planned acquisition will mainly have effects in Germany, the parties to the merger filed a request with the European Commission to have the case examined by the Bundeskartellamt (request for referral). However, since the procurement markets can be expected to extend beyond Germany's borders, e.g. furniture is also purchased by the parties outside Germany, the European Commission's referral of the merger control case to the Bundeskartellamt in late January 2020 only concerned the sales markets affected (relationship between furniture retailers

and end customers).<sup>1</sup> At the time of the Bundeskartellamt's decision the European Commission's proceeding was still ongoing.

The merger as originally notified was expected to significantly impede effective competition in 25 regional retail markets. The parties to the merger are among the leading furniture retailers in Germany each with an extensive network of outlets and online sales. After IKEA, the XXXLutz group ranks number 2 among the furniture retailers in Germany and the Tessner group ranks number 4. In recent years the XXXLutz group has experienced strong growth in Germany by acquiring third party furniture retailers and partly by opening up new sales outlets. Unlike the Tessner group, it is active throughout Europe and is also expanding in other countries, such as e.g. France, by acquiring Conforama France via Mobilux (But) which is controlled by the XXXLutz group; this acquisition is currently being examined by the French competition authority.<sup>2</sup>

The merger project directly affected 155 outlets of the Tessner group. The transaction does not include the 23 "MEDA" kitchen specialist outlets belonging to Tessner Holding KG. The examination focussed on the effects of the merger on the brick-and-mortar discount or pick-up segment. With their sales lines POCO, Mömax and Osca/Sparkauf (on XXXLutz's side) and Roller and tejo's SB Lagerkauf (cash and carry) (on Tessner's side) the parties are by far the leading furniture discounters in Germany in terms of number of outlets, geographical coverage and particularly turnover. They are also particularly close competitors. Therefore, the loss of the previous intensive competition between the parties in this segment would have been expected in different regional retail markets as a result of the merger. Furthermore, the merger would have resulted in a strong increase in resources and improved access of the parties to procurement markets. However, there was no evidence of effective potential competition and countervailing buyer power to counteract this. The same goes for any possible contrary consequences of the current coronavirus pandemic.

## **I. Relevant market for furniture retail**

With regard to the product market and based on the activities of the parties the market affected is the retail of articles from the basic furniture range. The basic furniture range includes kitchen

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<sup>1</sup> Cf. case M.9609 - MANN MOBILIA/TESSNER HOLDING, Decision of the European Commission of 23 January 2020; for non-confidential version see [https://ec.europa.eu/competition/mergers/cases/decisions/m9609\\_144\\_3.pdf](https://ec.europa.eu/competition/mergers/cases/decisions/m9609_144_3.pdf).

<sup>2</sup> The European Commission referred the case to the national authority. Cf case M.9894 - MOBILUX/CONFORAMA FRANCE, decision of the European Commission of 26.6.2020; non-confidential version see [https://ec.europa.eu/competition/mergers/cases1/202035/m9894\\_107\\_3.pdf](https://ec.europa.eu/competition/mergers/cases1/202035/m9894_107_3.pdf).

furniture and large electrical appliances, living-room and unit furniture, upholstered furniture, bedroom furniture, dining-room furniture, nursery and children's furniture, office furniture, outdoor and garden furniture, bathroom furniture as well as small furniture items and wardrobes. In order to adequately analyse relevant competitive forces, it was considered appropriate to define an overall market in the form of a full range market to which online sales and suppliers of part of the product range such as kitchen specialist and upholstered furniture outlets and DIY stores belong. However, the so-called living and interior accessories range, such as e.g. household textiles, lights and boutique accessories was excluded from the relevant product market.

Different market segments were identified within the overall retail market regarding articles of the basic furniture range, where there are sometimes seamless overlaps between the segments. The brick-and-mortar discount stores on the one hand and large furniture stores on the other hand have relevant distinguishing characteristics which justified their separate evaluation in the authority's substantive assessment, in particular in respect of the competitive closeness of the parties. Suppliers in the same segment exert particularly strong competitive pressure on one another. Other furniture discounters are the next best alternatives for the typical customers of a furniture discounter. The same basically applies to large furniture stores. The competitive pressure which large furniture stores exert on furniture discounters (and vice-versa) is thus less strong. Only competition from the IKEA stores which fall under the category of large furniture stores is somewhat more significant. Specialist outlets selling individual types of furniture exert even less competitive pressure on the furniture discounters and large furniture stores. For example, the purchase of a designer kitchen from a specialist kitchen outfitter is not an alternative for typical customers of discount furniture stores simply for budget reasons or an unwillingness to pay the higher price.

The relevant geographic market was defined in line with the Bundeskartellamt's previous decisional practice based on the target locations of the merger at hand. The primary focus in this case is the catchment area spanning five-figure postal code areas in which in terms of turnover 90% of the customers of the respective outlet are residents. This offers the advantage that direct account is taken of the actual shopping decisions made in the past by the customers concerned and implicitly the special circumstances of the area surrounding each outlet (incl. presence of third-party furniture retailers and own outlets, topographical conditions and transport infrastructure). In addition, those market areas are taken into consideration which emerge if a radius of 30 km (as the crow flies) is drawn around the target locations.

In view of the resulting horizontal overlaps on the geographic markets, special focus was placed in the substantive assessment on the brick-and-mortar discount segment. Furthermore, the

parties are also active in the (neighbouring) furniture store segment in Germany with the XXXLutz distribution channels and jointly controlled distribution lines Zurbrüggen, dodenhof and Möbelzentrum Pforzheim and the Schulenburg distribution line of the Tessner group. The XXXLutz group is also one of the leading suppliers in this segment in Germany with 53 outlets virtually covering the whole of the country, eight of which are not exclusively owned by the group. The Tessner group has eight large furniture stores located in northern Germany. The merger also results in overlaps in some market areas in this segment, which warranted a case-by-case examination of whether the prohibition requirements had been fulfilled. Where this was the case, the competitive assessment of the relevant market areas naturally focussed on the large furniture stores segment.

## **II. Effects of the planned merger**

The extensive investigations conducted by the Bundeskartellamt showed that the merger was expected to have substantial unilateral (or non-coordinated) effects in 25 market areas of the German furniture retail sector. Unilateral effects can basically be expected if, as a result of a merger, significant competitive pressure on one or more suppliers is eliminated and the latter consequently gain increased market power. The most direct effect of the merger is the loss of competition between the merging companies (first-order effect). Other companies, in particular the closer competitors of the parties on the relevant market, can also benefit from the decrease of competitive pressure resulting from the merger (second-order effect). The decrease of competitive pressure can lead to significant price increases or other negative effects for the affected customers on the relevant market. In its proceedings the Bundeskartellamt consistently based its assessment of the market areas on the criterion of "significant impediment to effective competition", SIEC under Section 36(1) sentence 1 of the German Competition Act, GWB.

For reasons of procedural economy and to ensure a uniform approach it based its substantive assessment of the 155 market areas affected by the merger on certain criteria and threshold values for each market segment. Although these gave a first indication that the preconditions for prohibition were met, they had to be subjected to an individual examination of the market and competitive conditions in each relevant market area.

The Bundeskartellamt holds that a first indicative threshold value for meeting the prohibition requirements in a market area defined as a discount area are a combined share of turnover of the parties of around two-thirds in the brick-and-mortar discount segment and a merger-induced increase of at least a mid-single-digit percent. The Bundeskartellamt also considered as further

indicative threshold values a combined share of the parties of at least just under one third or around 30% with regard to all full range furniture retailers in the brick-and-mortar and online segment respectively at least one quarter on the overall market including specialist outlets. At the same time a merger-induced increase would have to be at least in the lower to mid-single-digit percentage range for the Bundeskartellamt to assume a significant impediment to effective competition. In the case of a market area focussed on a large furniture store the Bundeskartellamt did not consider the brick-and-mortar discount segment but in particular the combined shares of the parties with regard to the brick-and-mortar discount retailers and furniture stores as well as the merger-induced increase in this respect. It deemed a share of at least around a half of the turnover and a merger-induced increase at least in the mid-single-digit percentage range to be indicative threshold values.

Ultimately in the Bundeskartellamt's view the conditions for prohibition under Section 36 (1) sentence 1 GWB were fulfilled in 25 market areas<sup>3</sup> including on the one hand the 24 discount stores Itzehoe (tejo's), Schwerin, Bremen-Oslebshausen and Stuhr (near Bremen), Neubrandenburg and Schwedt, Lüneburg (tejo's) and Uelzen (tejo's), Gifhorn (tejo's), Goslar, Goslar (tejo's) and Helmstedt (tejo's), Haiger, Plettenberg, Herzogenrath, Karlsruhe and Pforzheim, Bad Neustadt an der Saale, Würzburg, Nürnberg and Regensburg, Mühldorf am Inn, Kaufbeuren and Tettngang.<sup>4</sup> In most of the market areas the indicative threshold values mentioned above were in some cases clearly exceeded. In the brick-and-mortar discount segment the combined shares exceeded 80% in over half of the market areas and the merger-induced increase was more than 10% in nearly all market areas, and in individual cases even above 40%. Concerning all full range furniture retailers the combined share in six cases was at least 40% and the increase in seven cases was at least 10% and consequently in each case clearly above the indicative thresholds mentioned. The same applies to the overall market including specialist outlets. Here the combined share was more than 30% in ten cases and the increase in individual market areas over 10%. The prohibition requirements were also fulfilled in the furniture store based market area of Bremen (Schulenburg). The 25 SIEC market areas in total are spread across the whole of Germany. Some of them border on or overlap one another to a varying degree, as shown in the following map.

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<sup>3</sup> The addition "(tejo's)" means that the target outlet in the respective market area is one of tejo's SB Lagerkauf distribution line.

<sup>4</sup> Listed from north to south and according to geographically connected market areas and then alphabetically.



### III) Clearance subject to substantial conditions

In order to eliminate the significant impediment to competition in the 25 market areas mentioned above, the parties offered the Bundeskartellamt commitments. The commitments involve in particular the divestiture of 23 furniture retail outlets in SIEC classified market areas including 21 discount outlets and two large furniture stores to one or more independent buyers. The outlets have to be sold within a certain period and, as a suspensive condition, before the merger is implemented. In order to maintain the structural effect of the sale of the outlets the parties also

offered further conditions and obligations, including ensuring the competitiveness of the outlets concerned and the suitability of the actual purchaser/s.

An in-depth examination and market testing of the commitment offer by the Bundeskartellamt showed that the commitments offered were adequate to avoid a prohibition of the merger. Individual concerns expressed about the effectiveness of the commitments in the market test were also taken into account by the parties in their review of the commitments. In view of the extensive overlaps of the SIEC market areas, e.g. around Bremen and Goslar, the sale of a total of 23 stores will be sufficient to remedy the competition concerns in 25 market areas.

The divestiture commitments also include provisions concerning owned or rented stores, access to the necessary storage facilities and the transfer of inventory and staff. These are also subject to a strictly defined deadline. It was also specified that the purchasers of the stores in question be companies which are already active in the furniture retail sector and, prima facie, do not raise any competition concerns. Finally, the Bundeskartellamt imposed certain obligations on the parties for the time prior to and after the divestiture of the stores, including a prohibition of reacquisition for five years, a prohibition to open new stores in a certain radius also for five years as well as a two-year ban to poach key staff. A trustee will also be appointed to ensure that the divestiture is appropriately implemented and the parties fulfil the above obligations.

Ultimately the merger project was cleared subject to the conditions mentioned above. Due to the suspensive effect of the conditions, the merger can only be implemented once the Bundeskartellamt has established that the conditions have been fulfilled. Among others things, the authority will check the suitability of the actual purchaser(s) of the outlets for sale and its/their concept for continuing the business.