

Case summary

6 March 2020

Edgewell Personal Care Company, Shelton, Connecticut, USA, withdraws the notification of its acquisition of Harry's Inc., New York, USA

Sector: Wet shave razors

File number: B5-149/19

Date of withdrawal: 11 February 2020

In second phase proceedings the Bundeskartellamt examined the intended acquisition of sole control over Harry's Inc. ("Harry's") by Edgewell Personal Care Company ("Edgewell") in more detail. Its preliminary investigation results have shown that the concentration would have considerably impeded effective competition in the national private label wet shave razor market. In November 2019 the Bundeskartellamt expressed its competition law concerns regarding the concentration in a written preliminary assessment ("statement of objections") and gave the parties to the proceeding an opportunity to comment. The parties to the concentration withdrew their notification on 11 February 2020.

Edgewell is a publicly listed US company that manufactures and globally distributes personal hygiene products like wet shaving products, sun protection and skin care products, feminine hygiene products and baby and pet care products. One of the company's sites for the manufacture and distribution of wet shaving products is located in Solingen, Germany. In Germany the company distributes wet shaving products, including the "Wilkinson Sword" brand, and is one of the two major suppliers of branded products in this market besides The Procter & Gamble Company, which distributes its products under the "Gillette" brand. Edgewell also offers private label wet shaving products for retail companies.

Harry's was founded in 2013 and operates its only production site worldwide in Eisfeld, Thuringia, Germany, where Feintechnik GmbH had previously produced wet shaving products for many years. Harry's is one of Germany's leading providers of private label products and in recent years has also taken up the production of branded products, which it directly sells to private end customers. Harry's recently started offering its branded products in the US via retail outlets. Last year Harry's sold its first branded products in the UK, which marked the starting point of the expansion of its branded products sales to Europe.

The notified concentration would have particularly affected Germany's market for wet shaving products (razors and blades) that are distributed as private label products to and by retailers (e.g. drugstores and food retailers). In its preliminary assessment, the Bundeskartellamt defined the product market as a separate private label market since the characteristics of this market differ significantly from the market for branded products. Reasons for this definition included in particular the distribution channels and the availability of private label and branded products, various procurement factors, different strategies of providers of private label or branded products and major price differences. The authority did not subdivide the product market for private label wet shaving products into products for women and for men, or into disposable razors and shaving systems, because gender-specific products mostly differ in terms of their design, providers can manufacture the entire product range and retailers procure various private label wet shaving products as a bundle.

The geographic market definition was not conclusively assessed either. In its preliminary assessment the Bundeskartellamt assumed that the market in question was limited to Germany. The Bundeskartellamt did not have to determine conclusively whether the retailers' procurement behaviour called for the definition of a geographic market extending beyond Germany as the notification was withdrawn. Based on a Germany-wide market for private label products, the parties to the concentration would have achieved a joint market share of considerably more than 40 percent, which is the threshold value for establishing the assumption that market dominance exists (Section 18(4) German Competition Act, GWB). The South Korean company MTC, which has been distributing its products in Germany for several years, would have been the only major alternative supplier besides the parties to the concentration.

In its preliminary assessment of the concentration the Bundeskartellamt has established that the planned concentration would considerably impede effective competition due to unilateral effects. In its statement of objections the Bundeskartellamt explained that the parties concerned and their remaining competitor MTC would have considerable incentives to increase prices due to the large market shares, the very small number of major competitors and the closeness of competition. In particular customers that have so far simultaneously

procured private label wet shaving products from multiple suppliers would have been significantly affected by the concentration and restricted in their procurement options. The project basically would have been a “3-to-2 merger”. The Bundeskartellamt also examined whether the parties’ scope of action would be sufficiently limited by potential market entries, buyer power and free capacities of their competitors, which, according to the authority’s preliminary assessment, would not have been the case.

Its analysis of the degree of the parties’ competitive closeness showed that even though the parties are not the two closest competitors, they are still close competitors. The forecast based on the overall appraisal of the facts is that there would be considerable unilateral effects as a result of the degree of competitive closeness. Aspects considered for the overall appraisal of competitive closeness included the small number of suppliers in the market, the product differentiation, the number of customers who changed their supplier, the number of times both parties competed for the same orders and how often there were overlaps between the parties with regard to customers applying multi-sourcing and how often these customers switched between their procurement alternatives.

In its statement of objections the Bundeskartellamt has established that the existence of unilateral effects does not necessarily rule out the fact that the concentration could also lead to coordinated effects. The authority also considered it likely in its statement of objections that coordinated effects would occur in view of the fact that the parties very clearly exceeded the threshold of joint market dominance (Section 18(6) no. 1 GWB).

The deadline for the proceeding, which was notified on 9 August 2019, was extended several times at the parties’ request. Simultaneously to the Bundeskartellamt’s proceeding, the concentration was also examined by the US Federal Trade Commission (“FTC”). According to its preliminary assessment, the intended concentration was also seen critically by the FTC, and the parties concerned were informed accordingly in early February 2020. However, the FTC’s competition law concerns related to the US market for branded products, which was not the case in Germany¹. The parties consented to an exchange of information between the Bundeskartellamt and the FTC, which substantially contributed to the clarification of the facts of the case and the mutual understanding of the way in which both authorities conduct proceedings.

¹ See FTC’s complaint of 2 February 2020, https://www.ftc.gov/system/files/documents/cases/public_p3_complaint_-_edgewell-harrys.pdf