

***Case No IV/M.1355 -  
NEWELL /  
RUBBERMAID***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 13/01/1999

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.01.1999

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties:

Dear Sirs,

### **Case IV/M.1355 – Newell / Rubbermaid**

Notification of 3.12.1998 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 3.12.1998, the Commission received notification pursuant to Article 4 of Council Regulation (EC) n° 4064/89 of a proposed concentration by which the undertakings Newell Co. (“Newell”) and Rubbermaid Incorporated (“Rubbermaid”) enter into a full merger.

#### **I. THE PARTIES**

2. Newell is a US-based manufacturer and marketer of high-volume consumer products, ranging from hardware and home furnishings, office products, office storage and organisation products and housewares, and marketed through a variety of retailers, wholesalers, discount stores, home centres, hardware stores, office superstores and department and speciality stores.
3. Rubbermaid is a multinational manufacturer and marketer of primarily plastic products in particular, home products, commercial products, juvenile products and infant products, sold through mass-retailers and wholesalers, including discount stores and warehouse clubs, toy stores, home centres and hardware stores, supermarkets and catalogue showrooms.

#### **II. THE OPERATION AND THE CONCENTRATION**

4. The operation consists of a full legal merger between the two undertakings. The concentration will be brought about by Rubbermaid merging with a newly formed subsidiary of Newell created specifically for the purposes of the transaction. It will be effected in accordance with the terms of an Agreement and Plan of Merger entered into

between the parties on October 20, 1998. On completion of the concentration, the combined entity will be renamed Newell Rubbermaid Inc. ("Newell Rubbermaid"). As a result of the merger, current Rubbermaid shareholders will hold approximately 40 per cent, and the current Newell shareholders will hold approximately 60 per cent, of the share capital of the combined entity, that is, Newell Rubbermaid.

### **III. COMMUNITY DIMENSION**

5. The notified concentration does not meet the thresholds laid down in Article 1(2) of Council Regulation (EC) n° 4064/89, as the combined aggregate world-wide turnover of the undertakings concerned is less than Euros 5,000 million (i.e., in 1997, Newell: Euros 2,852 million; Rubbermaid: Euros 2,116 million, combined: Euros 4,968 million). However, the notified concentration has Community dimension pursuant to Article 1(3) of the Council Regulation. The combined aggregate world-wide turnover of the undertakings concerned is more than Euros 2,500. The combined aggregate turnover of the undertakings concerned exceeds Euros 100 million in at least three Member States (i.e., France, Germany and the UK). Moreover, in each of these Member States the aggregate turnover of each of the undertakings concerned is more than Euros 25 million. It goes without saying that the aggregate Community-wide turnover of each of the undertakings concerned is more than Euros 100 million. Finally, neither Newell nor Rubbermaid achieved more than two-thirds of their aggregate 1997 Community-wide turnover in any one Member State. Consequently, the concentration has a Community dimension within the meaning of Article 1(3) of Council Regulation n° 4064/89.

### **IV. DEFINITION OF RELEVANT MARKETS**

6. The operation will create horizontal overlaps in the manufacture and sale of home products, more particularly in home storage systems and food containers product lines.
7. For the remaining activities, the operation is largely complementary. Thus, Newell is not present in Rubbermaid's substantial business of commercial products (i.e., products for maintenance purposes, waste handling, health care and farming), juvenile products (i.e., toys and juvenile furniture) and infant products (i.e., entertaining products for babies, toddlers, highchairs, strollers and swings). In turn, Rubbermaid is not present in Newell's activities in home furnishings (i.e., window treatments, curtain rails, blinds, picture frames etc.), hardware and tools (i.e., blowtorches and accessories, paint brushes, painting rollers etc.), office products (i.e., markers and writing instruments and desktop and computer accessories), cookware (i.e., baking pans, pots, glass cookware and microwaveware) and health and beauty products (i.e., hairbrushes, combs and plastic clips).

#### Relevant Product Markets

8. The great majority of the products sold by the parties to the concentration can be described as falling within the category of high-volume consumer and commercial products. As mentioned in point 6 above, the parties' activities overlap in the manufacture and sale of home products, that is, a group of products consisting of a diverse range of houseware consumer goods. This includes storage and organisational solutions and containers for use in various sections of the home such as the kitchen, the bathroom or the outdoor areas (i.e., garden, garage etc). Within the home products group the parties' activities overlap with respect to two product lines, namely (i) home storage systems and (ii) food containers.

9. In home storage systems, Newell, through its subsidiary LeeRowan, produces wire storage systems, tight mesh shelving, wire hangers and wire basket systems. Rubbermaid produces plastic storage containers, cabinets, stacking drawers and baskets.
10. In food containers, Newell manufactures food storage containers under the Vitri brand. Rubbermaid also produces food storage containers.
11. Although both product lines are composed of a variety of individual products, which possibly differ in their physical characteristics, such as their shape, colour or material, however, it can be held that each product line, that is, home storage systems, on the one hand, and food storage containers, on the other, constitute separate relevant product markets. In line with the previous practice of the Commission, the relevant product markets could qualify as a ‘full line’ or ‘cluster’ of individual products that are marketed by all (or most) suppliers and are purchased by all (or most) customers in this particular industry<sup>1</sup>. A strictly applied demand-side substitutability analysis driven only by the products’ physical and functional characteristics for end-users would support the conclusion that many of the several individual storage products would constitute separate “micro” product markets. This would, however, give a misleading picture of the relevant competitive dynamics.
12. Thus, from a demand point of view, the merging parties’ customers, that is, mass market wholesalers and retailers, almost invariably tend to place orders for, and to purchase, packages composed of either home storage products or food containers. Most of them consider all articles in each group to be interchangeable and substitutable, as they have noticed that consumers tend to switch from one home or food storage configuration to another as a result of a marginal and non-transitory increase in the relative price of one of the items. Moreover, consumers are generally price sensitive with regard to such products; their buying patterns are uneven and, depending on their specific requirements, they usually try to pay the best price for the best fit (i.e., taking for instance into consideration their home-space availability, design, colour and configuration). This gives them a high profile of indifference vis-à-vis specific product configurations as they tend to ‘shop around’ within each product range for the best fit.
13. From a supply point of view, the Commission’s market investigation confirmed that the parties’ competitors supply a full line of either home storage or food storage products and systems, which they generally market as a total package. This is also apparent in their illustrated sales literature, where outstanding product groups such as home storage, food storage, household cleaning, small-office/home-office etc., are put in evidence for both functional and convenience purposes. Moreover, such competitors could quickly and easily begin supplying either specific lines or a full line of home storage and food storage products, should a hypothetical marginal increase be put in place by the merging entities. Overall, such suppliers indicated that their competitiveness in the market depends, to a significant degree, on their ability to offer a full range of products including the majority of possible product configurations in either home storage systems or food containers. In addition, suppliers stated that there appears to be price correlation among the individual products composing each package and that prices tend to move in parallel for the whole of the cluster, which is partly explainable by the fact that the majority of the products under

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<sup>1</sup> See in particular cases IV/M.330 – McCormick/CPC/Rabobank/Ostmann (also referred to as the *Spices Case*); IV/M.186 – Henkel/Nobel; IV/M.315 – Mannesmann/Vallourec/Ilva; IV/M.523 – Akzo Nobel/Monsanto.

consideration use the same basic raw material, that is plastic, and the same distribution channels.

14. For the reasons mentioned in the preceding points, it can be held that the relevant product markets for the assessment of the concentration are home storage products and systems, on the one hand, and food containers, on the other.

#### Relevant Geographic Market

15. The notifying parties suggest that the relevant markets possess features of at least European-wide markets. The Commission looked at the effects of the operation at both European and national level and concluded that no matter the precise geographic market definition, the operation would not raise serious doubts as to its compatibility with the common market. Therefore, in the present case, it is not necessary to delineate the precise geographic extent of the relevant markets.

### **V. COMPETITIVE ASSESSMENT**

#### Horizontal Effects

16. The combined market shares in home storage systems and food containers at European level are low. Market shares are low at national level as well, where in home storage systems the combined entity would register its highest market shares in [...], [...] and [...], whereas in food containers the combined entity would achieve its highest market share in [...].
17. The markets in which the parties operate are highly competitive and consequently customers have an array of suppliers to source their requirements from. Most customers are major retailers, including supermarkets, do-it-yourself stores (DIY) and other general department stores and cash-and-carries. Apart from their substantial bargaining power, these retailers have numerous alternative sources of supply apart from the merging parties. As most customers indicated in their replies to the Commission's enquiry, the number of suppliers at European level guarantees a high degree of freedom of choice.
18. The concentration is not likely to affect the situation as it described in the preceding points and consequently does not raise serious doubts as to its compatibility with the common market.

#### Range Effects

19. The combined entity will market a range of complementary and closely-related, but non-competing products such as juvenile and infant products, home furnishings, hardware and tools, office products, cookware, health and beauty products and other home products, the latter including home storage systems and food containers. Therefore, the Commission has also examined the possible creation of portfolio power, since the concentration brings under the same entity a wide range of products across several categories of consumer goods sold to mass market retailers as a package. However, the Commission did not identify any portfolio effects because, among others, in none of the product lines within the portfolio have the parties any significant market power and, moreover, the product markets in which the portfolio is held, widely diverge from each other thus making tying sales or predatory pricing unprofitable.

### **VII. CONCLUSION**

20. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,