Summary of Commission Decision

of 17 November 2010

declaring a concentration compatible with the internal market and the functioning of the EEA Agreement

(Case COMP/M.5658 — Unilever/Sara Lee Body Care)

(notified under document C(2010) 7934)

(Only the English text is authentic)

(Text with EEA relevance)

(2012/C 23/10)

On 17 November 2010, the Commission adopted a decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings [1], and in particular Article 8(2) of that Regulation. A non-confidential version of the full decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address:

http://ec.europa.eu/comm/competition/index_en.html

I. THE PARTIES

(1) Unilever, an Anglo-Dutch company [2], is a worldwide supplier of fast-moving consumer goods and has primary share listings on Euronext Amsterdam (through Unilever N.V.) and the London Stock Exchange (through Unilever Plc). Its principal businesses are in the food, home care and personal care categories. In the home care sector, Unilever is a leading supplier of products for fabric and surface cleaning and hygiene. Unilever's personal care division supplies deodorants, bath & shower products, skin care products, oral care products and hair care products.

(2) Sara Lee Corporation is a worldwide supplier of branded consumer goods, operating in the meats, bakery, beverage and household and body care sectors with its headquarters in the US and listed on the New York and Chicago Stock Exchanges. Sara Lee Body Care is comprised of: (i) the global body care business which manufactures and supplies bath and shower products, deodorants, baby care products, men's toiletries and oral care products worldwide; and (ii) the European laundry care business supplying fabric cleaning and conditioning products and laundry aids.

II. THE OPERATION

(3) On 25 September 2009, Unilever made an offer for Sara Lee Corporation's worldwide body care and European laundry care businesses. The acquisition by Unilever is structured as a number of purchases of shares and assets comprising Sara Lee Body Care from Sara Lee Corporation, as set out in the sale and purchase agreement (the 'SPA').

(4) Since after completion of the notified transaction Unilever owns all the shares and assets of Sara Lee Body Care, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. SUMMARY

(5) After examination of the notification, the Commission adopted a decision on 31 May 2010, concluding that the operation falls within the scope of the Merger Regulation and raises serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement and initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation.

(6) On 12 August 2010, a statement of objections was sent to Unilever pursuant to Article 18 of the Merger Regulation. Unilever replied to the statement of objections on 27 August 2010.

(7) On 21 September 2010, Unilever offered commitments with a view to rendering the proposed concentration compatible with the internal market. These commitments were modified and the final version of the commitments was submitted to the Commission on 12 November 2010.

IV. EXPLANATORY MEMORANDUM

(8) Unilever and Sara Lee Body Care are both active in the supply of personal care and home care products. Their activities overlap in the following categories: deodorants, skin cleansing (products for personal washing like bath and shower and soap products), skin care (products designed to moisturise and nourish skin on the hands and body), fabric care (detergents, conditioners and

[1] OJ L 24, 29.1.2004, p. 1.

[2] Unilever has a dual listed structure comprising Unilever N.V. and Unilever Plc. The two entities exist as separate companies but operate as a single economic unit.

laundry aids), aftershave treatments, oral care (toothpaste), hair care (shampoo, conditioners and styling products) and household cleaning (multi-purpose cleaners).

(9) Irrespective of the precise market delineation, the transaction does not raise competition concerns in the following categories: skin cleansing, skin care, fabric care, aftershave treatments, oral care, hair care and household cleaning.

(10) This summary only focuses on deodorants, for which a significant impediment to effective competition was identified in a number of national markets, namely Belgium, Denmark, Ireland, the Netherlands, Portugal, Spain and the United Kingdom.

A. **The relevant markets**

(11) Deodorants are products minimising or eliminating the negative effects of sweating through control of odour and/or wetness. They are increasingly differentiated according to gender and most brands have variants marketed specifically to male and female consumers. Certain brands are sold with only male or female variants. In some Member States (especially Spain) a 'unisex' category exists, with products appealing to both male and female consumers.

(12) Deodorants are sold in different formats. A distinction can be made between contact (primarily roll-ons, creams, stick and wipes) and non-contact formats. Deodorant brands are typically associated with certain core functionalities, the main ones being 'efficacy', 'skin caring' or 'fragrance'.

(13) Sara Lee's leading brand is Sanex [1]. Its marketing focuses primarily on the promises of healthy skin, although customers also value Sanex for its efficacy credentials.

(14) Unilever has three core EU-wide brands: Axe, Rexona and Dove [2]. Axe (known as Lynx in the United Kingdom and Ireland) is an exclusively male deodorant. Rexona (known as Sure in the United Kingdom and Ireland) is positioned as an efficacy product, available in male and female variants, although its credentials are stronger in the female area. Dove deodorants have a particular focus on superior moisturising to fight skin dryness. The brand used to be exclusively targeted at women, but a range of products under the Dove Men + Care brand, including deodorants, has been launched across several Member States in the EU in January 2010.

(15) The Parties' main competitors in the EEA are: Beiersdorf (which markets Nivea, one of the main deodorant brands in the EEA), Henkel (with its brand Fa), Colgate-Palmolive (which supplies deodorants under the brands Palmolive and Soft & Gentle), L'Oreal (active with brands such as Narta, Ushuaïa and Garnier Mineral) and Procter & Gamble (which markets brands the brands Mum, Secret, Gillette and Old Spice).

Market definition for deodorants

(16) With respect to the relevant product market, the market investigation did not confirm the product market definition proposed by the Parties whereby male deodorants form part of the same relevant product market as non-male deodorants. Instead, the investigation showed that male and non-male deodorants form two distinct product markets.

(17) The market investigation provided a number of elements which allowed the conclusion that male and non-male deodorants are not substitutable from a demand side point of view, including separate shelf organisation, price differences, different growth patterns and limited cross-gender use. Regarding supply-side substitutability, the results of the investigation did not support the conclusion that male and non-male deodorants are substitutes for the purposes of the relevant product market definition. If the extension of a well known male/female/unisex deodorant brand into a different gender category in principle would be 'possible' for the major deodorants suppliers, such extension would still require a significant time and investment to prepare and launch the product. It was thus concluded that male deodorants and non-male deodorants are separate relevant product markets.

(18) In relation to the relevant geographic market, the market investigation confirmed that the geographic market for deodorants remains national in scope. Customers and competitors across all Member States explained that prices and consumer preferences for brands, formats and gender varieties differ between countries. Local brands still play an important role in several Member States. Moreover, almost all market participants confirmed that price negotiations, as well as procurement, were conducted at national level. Therefore, the deodorants markets were analysed on a national level.

B. **Competitive assessment**

Introduction

(19) The Commission carried out a thorough investigation as to the structure and the functioning of the deodorants markets concerned by the proposed merger. As a result, the Commission found that the merger is likely to result in a significant impediment of effective competition in the markets for non-male deodorants in Belgium, Denmark, Ireland, the Netherlands, Portugal, Spain and the United

[1] Sara Lee also supplies deodorants under other brands including Radox (United Kingdom and Ireland), Williams (Belgium, Denmark, France and Spain), Duschdas (Germany); Monsavon (France) and Neutral (Denmark, the Netherlands and Sweden). These brands are much less important in the Sara Lee deodorant portfolio compared to the main brand Sanex.

[2] In addition to the core brands it has two brands present in a certain national markets: Vaseline (Vasenol in Portugal) and Impulse.

Kingdom. With regards to the male deodorant market, significant impediment of effective competition was only identified in Spain.

(20) The following recitals describe, first, the assessment of general arguments which were applicable for all the Member States mentioned before. Second, a country specific assessment is presented before the commitments offered are summarised.

General assessment

(21) In differentiated markets, such as the market for deodorants, market shares, although providing an indication of the market power of the Parties, may not fully reflect the competitive interaction. The Decision examines the elements pointing towards price rises before discussing countervailing factors in line with the framework for analysing non-coordinated effects in the Horizontal Merger Guidelines ([1]).

Likelihood of price increases

(22) In differentiated markets the degree of substitutability between the merging firms' products is an essential element in assessing the effects of the merger. With regards to closeness of competition, the Commission concluded that Unilever's brands (Dove, Rexona/Sure and Vasenol/Vaseline) have a comparable brand positioning to Sanex. Unilever's internal documents and analysis of a number of interaction studies also confirmed the closeness between Unilever's brands and Sanex.

(23) The Commission conducted a merger simulation which pointed to likely price increase following the transaction. The model has two components. The demand side describes how consumers chose a deodorant product and nested logit models have been used. The supply side describes how producers chose their prices: the model assumes that producers compete by setting their products' prices while viewing demand as described by the estimated model. The predicted price increase is obtained by comparing the model's post-merger market equilibrium to the prevailing pre-merger equilibrium. To simulate post-merger prices, the economic model used assumes that, after the merger, the merging brands are priced by the same firm, while they were competing with each other pre-merger.

Lack of countervailing buyer power

(24) Unilever has a sizeable position within the deodorant market, which allows it to have a better bargaining position compared to its competitors. The Commission concluded that this position would be further enhanced by the proposed transaction and cannot be countered by retailers as their bargaining position is further weakened.

(25) Indeed, neither the competitive pressure exerted by private labels nor the threat or effective delisting from retailer's shelves or the relative margins showed that retailers would be able to resist a general increase of Unilever's prices post merger.

(26) Having assessed all the elements, it was concluded that buyer power would not mitigate the likelihood of price increases.

Sufficient entry unlikely to occur

(27) A majority of competitors, but also a high number of customers in the deodorant markets, indicated that entering (or expanding in) the deodorant market — either from a neighbouring personal care market or as a new entrant — is difficult, and that barriers to entry in the deodorant markets are generally high. Indeed, successful entry of a new brand or the introduction of a new gender variant by an existing deodorant supplier involves significant investments and time due to several crucial stages (concept testing, distribution, marketing).

(28) Moreover, internal documents and examples of the recent entry of Garnier Mineral demonstrated that Unilever as the leading incumbent with several brands has not only the ability, but also the incentive to try to prevent entry of new brands or expansion of existing ones.

(29) Therefore, it was concluded that barriers to entry are significantly high in the deodorant markets.

Country specific assessment

(30) In most of the national markets concerned the transaction would result in a further strengthening of Unilever's already leading position in non-male deodorants (one exception was Denmark, where Sara Lee was the market leader and Unilever number two). Although the increment varies, it was usually significant and above 6 percentage points. Moreover, in all these Member States, the second largest competitor would have significantly lower market shares than the combined market shares of the Parties in non-male deodorants, as shown in the table below:

Country	Unilever in %	Sara Lee in %	Combined in %	Competitors in %
Belgium	30-40	10-20	50-60	Henkel: 10-20 Beiersdorf: 10-20 Private labels: 5-10

([1]) Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, p. 5 (hereinafter referred to as 'Horizontal Merger Guidelines').

Country	Unilever in %	Sara Lee in %	Combined in %	Competitors in %
Denmark	20-30	20-30	40-50	Unicare: 10-20 Beiersdorf: 10-20 E. Tjellesen: 5-10
Ireland	60-70	5-10	60-70	Beiersdorf: 10-20 Colgate: 10-20 Revlon: 0-5
Netherlands	30-40	10-20	40-50	Beiersdorf: 10-20 Others: 10-20 Henkel: 5-10
Portugal	40-50	5-10	40-50	Beiersdorf: 20-30 L'Oreal: 10-20 Private labels: 5-10
Spain (non-male market)	20-30	20-30	40-50	Private labels: 20-30 G. Puig: 5-10 Beiersdorf: 5-10
Spain (male market)	50-60	10-20	60-70	Beiersdorf: 10-20 G. Puig: 5-10 Coty: 5-10
UK	50-60	5-10	60-70	Colgate: 5-10 Revlon: 5-10 Beiersdorf: 5-10

Belgium

(31) In Belgium, the market investigation showed that there was significant competitive interaction between the Parties' brands. The most successful player in the non-male deodorant market was Sara Lee with its brand Sanex, sales of which increased by [10-20 %] between 2008 and 2009. The risk of losing sales to Sanex was an important competitive constraint on Unilever that the transaction would remove. The overall simulated price increase for the total deodorant category would be in the region of 4-5 %, and around 6 % in the non-male deodorant market. In addition Sanex was predicted to have strong price increases (between 14 % and 20 %).

Denmark

(32) Sara Lee was the number one and most successful non-male deodorant supplier in Denmark. The market investigation revealed that some of the competitors supply premium/prestige brands which were rather distant competitors to the Parties' brands. The price difference between these brands and the 'mass market brands', such as the brands of the Parties, remained significant. The transaction would have eliminated the rivalry between the two leading suppliers as Sara Lee's brands were constrained by Unilever and vice versa.

Ireland

(33) In Ireland, the combined market shares in the non-male deodorant market — 60-70 % — were very significant (the second player — Beiersdorf — would be many times smaller than the new entity). The market investigation indicated that Parties' brands were close competitors, especially Dove and Sanex. It also pointed to the fact that the transaction would have eliminated a competitive force which spurred competitive rivalry in the market.

The Netherlands

(34) In the Netherlands, Unilever and Sara Lee were the first and third supplier on the non-male deodorant market. The most successful player was Sara Lee, whose sales increased by [10-20 %] between 2007 and 2009, with Sanex increasing its sales by [10-20 %] and Neutral by [20-30 %]. The transaction would have eliminated a close competitor to two of Unilever's core brands. The prospect of price increases arising from the transaction was therefore significant and the merger simulation indicated a 5-6 % price increase for deodorants in the non-male market. The main drivers being price increases from Sanex (around 20 %) and Dove (between 7 and 11 %).

Portugal

(35) In Portugal, the Parties would have achieved a combined market share of [40-50 %] in the non-male deodorant market. It would have exceeded by more than 2 times the share of its nearest competitor Beiersdorf and would have been more than 4 times bigger than the next competitor, L'Oréal. The market investigation revealed that Parties' brands were close competitors, in particular Vasenol, Dove and Sanex. In addition, even if Sanex declined between 2003 and 2007, it was a steady brand since 2007 and one of the five/six main brands in Portugal.

Spain (non-male market)

(36) In Spain, Sara Lee and Unilever were the largest suppliers in the non-male deodorant market, each of them being more than twice the size of the third largest branded supplier, Puig. The closeness of competition between the Parties' brands was also confirmed by the market investigation. While private label sales were particularly significant in Spain (20 %) and showed high growth rates, this increase was mainly the result of the strategy of one specific retailer. Furthermore, the increase of private label sales primarily impacted competitors' brands (whose sales dropped between 15 % and 50 %), whereas Sanex slightly grew and Unilever remained stable.

Spain (male market)

(37) In the Spanish male market, Unilever and Sara Lee were the largest suppliers in the market. The market investigation revealed significant competitive interaction between Sara Lee's brands (Sanex and Williams) and Unilever's brands (Axe and Rexona), in terms of brand proposition and price positioning. The merger simulation indicated a 2,2 % price increase for male deodorants.

The United Kingdom

(38) In the United Kingdom, the Parties achieved a combined market share of [60-70 %] in the non-male deodorant market, whereas the main remaining competitor would have been Colgate with market, shares of [5-10 %]. Apart from the Parties, there were only three competitors with a market share in excess of 2 %. The qualitative and quantitative data gathered during the market investigation revealed that Parties' brands closely compete with each others. The merger simulation predicted price increases in the total deodorants category in the region of 2-3 % and of 4 % in the non-male deodorant market. On the brand level, Sanex was predicted to have quite strong price increases (around 30 %).

C. **Commitments**

(39) In order to remove the identified competition concerns arising from the transaction, the Parties proposed commitments under Article 8(2) of the EC Merger Regulation. The first set of commitments was submitted on 21 September 2010, updated on 24 September 2010 with a view of obtaining a clearance of the operation from the Commission. The remedy package consisted of a five-year licence for the purposes of re-naming: (i) all products under the Sanex trade mark in the United Kingdom, Ireland, Belgium, the Netherlands and Denmark; and (ii) the Rexona trade mark in Spain and Portugal in relation to deodorants.

(40) Subsequently, the Commission market-tested the commitments. The results of the first market test showed that significant improvements were needed. As a consequence, the parties submitted on 7 October 2010 an improved set of commitments consisting of a full divestiture of the Sanex deodorants business in Belgium, Denmark, Ireland, the Netherlands, Spain, Portugal and the United Kingdom. Unilever would retain the Sanex brand for all other products/countries with an obligation to re-brand.

(41) The market testing of the second package showed that the divestiture of Sanex deodorants was a more clear-cut solution and preferable to the first one, but some concerns were expressed as regards the viability of a remedy splitting Sanex between deodorants and other product categories. The Parties were informed of these concerns and on 12 November 2010 submitted a final commitments package.

(42) The final commitments consist of a full divestiture of the Sanex business across all product categories in the EEA and includes all trade mark rights owned by Unilever in Europe in relation to Sanex, all intellectual property rights owned by Unilever in Europe which are used in or relate to the Sanex business including pipeline innovations, all contracts, leases, commitments and customer orders, including all co-packing contracts relating to the divestment business, access to all production equipment and production lines used in the Sanex business as well as the key personnel.

(43) The final remedy package removes competition concerns identified in a clear-cut way, as it provides for a permanent divesture of Sanex including deodorants in all seven Member States where competition concerns were identified, without raising any viability issues. It constitutes a clean, workable and effective remedy capable to create a viable and effective competitor since this solution addresses all viability concerns expressed during the second market test concerning the brand-split proposed in the second commitment proposal.

V. **CONCLUSION**

(44) For the reasons mentioned above, the Decision concludes that the proposed concentration will not significantly impede effective competition in the internal market or in a substantial part of it.

(45) Consequently, the concentration should be declared compatible with the internal market and the functioning of the EEA Agreement, in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.