

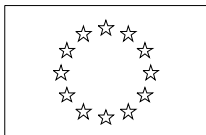
***Case No COMP/M.2665 -
JOHNSON
PROFESSIONAL
HOLDINGS /
DIVERSEY LEVER***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/03/2002

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04/03/2002

SG (2002) D/228756

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.2665 – Johnson Professional Holdings/DiverseyLever

**Notification of 1.2.2002 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. The operation consists of the proposed acquisition of sole control by the US based Johnson Professional Holdings Inc. of the whole of DiverseyLever business worldwide, within the meaning of Article 3(1)(b) of the Council Regulation. The acquisition would be carried out by way of purchase of assets from Unilever.
2. After examination of the notification, the Commission has concluded that the proposed operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I THE PARTIES

3. Johnson Professional Holdings Inc. (“Holdings”) is a holding company and a member of the Johnson Wax Professional Group (“Johnson Wax”), which is a worldwide supplier of cleaning and hygiene products and services. It principally supplies to “institutional customers”, such as hotels, restaurants and schools. Its global headquarters are located in Wisconsin, USA, and it has operations in more than 50 countries worldwide.
4. DiverseyLever is as well a worldwide supplier of cleaning and hygiene products and services. It mainly supplies to “industrial customers” in the food and beverage industries. The business of DiverseyLever was created in 1996 when Unilever acquired Diversey and merged it with its existing detergents business (Lever Industrial). DiverseyLever currently forms part of the Unilever group of companies, which is ultimately controlled by Unilever N.V. and Unilever PLC. DiverseyLever has its headquarters in the Netherlands and operations in over 60 countries worldwide.

II. THE OPERATION

5. The parties have entered into a Purchase Agreement pursuant to which Holdings has agreed to purchase the entire DiverseyLever business from Unilever by the purchase of assets (including the share capital of certain DiverseyLever companies), giving Holdings sole control of DiverseyLever.
6. Part of the consideration for the transaction will be satisfied by the issuing of shares to Unilever representing 33,33 % of the entire issued share capital of Holdings. Unilever will also have minority shareholder protection rights and it will nominate [...] to the Holdings’ Board. These rights do, however, not make it possible for Unilever to exercise de jure or defacto control in Holdings. [...]. Unilever proposes to end its participation in Holdings after a minimum time period of 5 years by the exercise of put options attached to its shareholding. The parties have also agreed to enter into certain ancillary agreements which they consider necessary for the Unilever Group to carry on its retained consumer businesses. In particular, Unilever has concluded with Johnson Wax for the continued sales of certain Unilever products through the Johnson Wax distribution network. This structural link which will be created between Unilever and Johnson Wax does not have any material impact on the competitive assessment of this transaction.

III. CONCENTRATION OF A COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Johnson Wax Professional Group EUR [...] million and DiverseyLever EUR [...] million)². Each of them have a Community-wide turnover in

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

8. The proposed transaction concerns the manufacture and sale of detergents to industrial and institutional customers. The notifying party submits that by reference to customers, channels of distribution and products, separate sectors may be identified for *industrial* and *institutional* detergents. As Johnson Wax has only a minimal presence in the industrial sector in Europe, there would seem to be a degree of overlap between the parties' activities only in the institutional sector, which by value is the most important detergents market.
9. The separation into industrial and institutional detergents is supported by the Commission findings in its previous decision concerning Diversey³. According to the Commission decision, the institutional sector would comprise detergent products supplied to institutional customers such as hotels, restaurants, hospitals and schools. This sector could be further subdivided into 1) the kitchen hygiene market, 2) the on premises laundry ("OPL") market and 3) the housekeeping hygiene market, even though the Commission concluded that a limited degree of substitutability existed between the products within the institutional sector.
10. The notifying party adopted this reasoning also as regards the current transaction and submitted that the narrowest possible categorisation for the analysis of the effects on competition would be to treat the following product categories separately, within the institutional sector:
 - i) kitchen hygiene market (hygiene products specific to the cleaning of kitchens or for machine ware washing in for example restaurants, catering companies or hospitals),
 - ii) the on premises laundry market; OPL (hygiene products for textile cleaning at laundries located on the premises of one establishment, a hotel laundry for example) and
 - iii) the housekeeping hygiene market (hygiene products for cleaning areas such as retail premises and receptions).
11. The market investigation fully confirms the separation between industrial and institutional detergents, but many respondents state that it would not be possible to draw a clear line between the various institutional detergent products. This is mostly because certain products have applications in more than one sub-sector. On the other hand, the proposed segmentation has not been contested either. Furthermore, it is obvious that there is no support for even narrower product markets. Both customers and competitors have agreed that as a general approach the proposed segmentation is logical and that these are the major market segments within institutional detergents, if a distinction is to be made. Major suppliers of institutional detergents generally focus on

³ Case IV/M.704 – Unilever/Diversey, 20.03.1996

these segments and the majority of the products supplied are specific to each of the relevant sub-sectors.

12. From the suppliers perspective there is a substantial level of production substitutability between the proposed categories of institutional detergents, but as regards their management and marketing, suppliers do often view the above explained segments separately. For example, different segments might have different requirements as regards sales force. There is also some evidence of narrower product markets from the demand side perspective. Institutional customers have their specific needs in a particular segment in the institutional hygiene sector, which can best be fulfilled by products designed for that specific application. A customer would typically not switch to a detergent product meant for another segment due to a price increase. It is, however, difficult to draw clear lines between segments as some substitutability exists between them also from the demand side perspective.
13. Some of the competitors have stated, however, that the OPL- market should be combined with the “commercial laundry segment” and that the two segments would together form a specific “textile hygiene market”. The notifying party submits that the commercial laundry segment can be differentiated from the OPL-sector by reference to distinct products, processes and customers, and that the majority of suppliers concentrate in either OPL or commercial laundry. In the market investigation it has been counter-argued that due to the ongoing technical and commercial developments the products used in these segments would be largely interchangeable and similar as regards function and composition. As Johnson Wax is not active in commercial laundry, this segment has not been further analysed for the purposes of this case.
14. In addition, it has been argued that the “hospital hygiene segment” (covering antiseptic and disinfecting products) might create its own separate market due to the higher regulatory standards. As the sales of DiverseyLever in the hospital hygiene segment are negligible and as Johnson Wax is not active in this segment at all, it has not been further analysed for the purposes of this case either.
15. The market investigation has confirmed that certain consumer products may be considered as part of the above institutional detergent product markets. This would mostly be due to overlaps in distribution channels. As a result, institutional customers sometimes buy consumer products to be used in the professional setting. This practice seems to be most common for smaller institutional customers.
16. The question as to where the exact boundaries of the relevant product markets lie, can, however, be left open as there will be no impact upon competition regardless of where they are drawn.

B. Relevant geographic markets

17. The notifying party submits that even though some national market characteristics remain, there is a trend towards a European market in institutional detergents. The notifying party also considers it to be inappropriate to analyse the markets on a purely national basis because of the extent of geographical overlap. It therefore concludes that the relevant geographic markets should in some cases be considered on a national basis, but in most cases according to regional groupings.

18. The regional markets proposed by the notifying party are: UK & Ireland, the Benelux countries, the Iberian peninsula, the central European countries (Austria & Germany) and the Nordic countries. According to the notifying party, there are common cultural and demand characteristics, synergies in logistics, similarity in legislative standards and material cross-border trade within each of these groupings. On the other hand, France, Italy and Greece are proposed to be treated separately as national markets. This is due to the fragmented nature of these markets, the great number of small competitors and for example price differences compared with other areas.
19. The geographic market definition was left open in the decision concerning the acquisition of Diversey⁴. The Commission did, however, consider there to be a trend towards harmonisation at European level but that some industrial or institutional detergent markets would still be more appropriate to consider on national basis. This was due to price differences, costs of transportation, different national legislative requirements and the need to serve customers on a regional or national basis.
20. The results of the Commission market investigation carried out for the purposes of this case, indicate clearly that although there is a tendency towards trading on European level, and sometimes even on worldwide level, the supply of institutional hygiene products still occurs primarily on national level. This is mainly due to the national structure of distribution channels and servicing, national regulatory requirements, price differences and the national scope of competitors. However, in some parts of Europe, such as the Nordic countries, also regional markets might be identified.
21. According to the market investigation, even though some detergent manufacturers treat some countries as clusters when defining their management and marketing strategies, similarities in culture and language are not an overriding factor which would lead to regional markets. There are clear national boundaries in the distribution channels. In some countries exclusive distributors prevail whereas in some other countries distributors are mostly wholesalers. Customers also expect local sales force and service support. In general, service is considered to be a very important criterion when selecting the detergent supplier. As regards purchasing patterns, centralised direct purchasing seems to be applied only by multinational institutional customers, such as large international hotel chains, whereas smaller customers purchase for example from a cash and carry- outlet. However, even when the purchase is made centrally, the actual supply of detergents, ancillary equipment and services would usually take place on a national basis.
22. Most suppliers of institutional detergents tend to harmonize their European wide product lines as regards product content, quality and branding, but they have to continue taking into account the differences between national legislations and other requirements concerning environment and packaging. Even if national legislations are converging, there is a wide divergence by country on health and regulatory practices, which cause the suppliers to view markets by country, not by region.
23. Even though prices seem to be increasingly determined on a European level, especially following the introduction of the Euro, pricing is still driven by prevailing national price levels, taking into account the supply conditions and the competitive situation in

⁴ Case IV/M.704 – Unilever/Diversey, 20.03.1996

each country. It has been indicated that for example stricter environmental requirements in some countries have an impact on the end price as well. The price for a particular product which is supplied in a similar form in several countries might vary considerably. Even between neighbouring countries, such as the UK and Ireland, considerable price differences, sometimes above 10%, exist. Moreover, products offered might also differ across Europe in terms of dosage, equipment and additional services.

24. Based on the above, competition seems to take place mostly on national level. On the other hand, the majority of respondents to the market investigation would suggest to treat Austria and Germany, the Nordic countries and the Benelux countries as regional markets. However, it is not necessary to decide on the geographic dimension of the market because in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area, as a result of the notified operation.

C. Assessment

25. The parties' activities overlap in most of the regional and national Institutional Detergents markets considered above. Although the degree of overlap and the identity of the fringe players vary between member states, the basic market structure is similar throughout Europe. The notified operation will lead to the emergence of two European market leaders, whose combined EU market shares, according to the parties, are:

2000	Kitchen Hygiene	Housekeeping	OPL	Total Institutional
Johnson Wax	[1-10]%	[1-10]%	[1-10]%	[1-10]%
DiverseyLever	[10-20]%	[1-10]%	[1-10]%	[1-10]%
Combined	[10-20]	[10-20]%	[10-20]%	[10-20]%
Ecolab	[20-30]%	[10-20]%	[10-20]%	[10-20]%
Others	[60-70]%	[60-70]%	[70-80]%	[60-70]%

26. Some third-party estimates indicate that the combined entity's market shares may be higher than the ones provided by the parties. However, the investigation confirmed the parties' contention that no reliable market share data exists. Third parties' estimates vary significantly, but they confirm the overall three-tier market structure described above.
27. The markets for *industrial* and *institutional* detergents will post merger be characterised by a three-tier structure:
- Two global manufacturers, Ecolab (previously Henkel-Ecolab) and Johnson Wax / DiverseyLever, who can supply integrated cleaning solutions to a range of institutional customers on a European scale. Both companies provide a range of detergents (made from ingredients widely available from major chemical manufacturers) conditioned for a large number of specific institutional applications along with the necessary dosing equipment and customer service.
 - A set of regional and local suppliers, among which the largest, like Sutter, Proquimia, Dr.Weigert and Dr. Becher offer a wide range of products on several national markets, whereas the smallest tend to have a niche expertise on some products and limit their geographic coverage to their domestic market.

- Consumer detergent manufacturers, including Procter & Gamble, Colgate, Reckitt Benckiser and, potentially, Unilever⁵.
28. On a national basis, market shares tend to replicate the European averages and generally show a similar balance between the combined entity, Ecolab and smaller manufacturers. Somewhat different market shares arise in the following countries:
- Portugal : the combined entity will have [30-40]% for kitchen hygiene, [20-30]% for housekeeping and [30-40] % for OPL, whereas Ecolab will have respectively [10-20]%, [1-10]% and [1-10]%
 - Finland : due to the existing position of DiverseyLever, the combined entity will have [30-40]% for kitchen hygiene and [30-40]% for OPL, while Ecolab will have respectively [10-20]% and [1-10]%.
 - United Kingdom : the combined entity will have more than [20-30]% for kitchen hygiene and housekeeping, while Ecolab will have [1-10]% only.
29. However, even in Portugal, Finland and the United Kingdom, the strength of Ecolab in terms of sales and marketing, product range and production capacity is recognised by virtually all respondents to the Commission's investigation, which indicates that the combined entity would not be able to behave on the market independently, even if Ecolab is at present weaker in a given national market. In this respect, some multinational customers explicitly welcome the proposed transaction as it improves Johnson's ability to provide one-stop shop solutions in competition with Ecolab who is perceived to be the current market leader.
30. Regional and local players were found to be following two basic strategies: regional players are looking for the largest range of products but focus on a single region ; local players tend to specialise on some products and limit their geographic coverage to a single country.
31. The market investigation confirmed that barriers-to-entry to the institutional detergents market are lower than in the consumer market as brands are less important and production is less scale-intensive (as a result of the larger number of product variants). In particular, there is significant scope for supply-side substitution and geographic expansion by smaller players. According to the market investigation, transport costs do not represent a significant barrier for these companies to supply a wider geographic market, but access to distribution channels and customers against incumbent competitors appears to be a major obstacle to expansion. However, these companies would seem to be well placed to enter new geographic markets in response to a price rise, or if encouraged by a customer seeking additional suppliers. For example, Sutter, with only one manufacturing plant in Italy, has been able within a few years to start commercial operations in France, Spain and Portugal, recording a growth rate of between 15% and 45% on each of these markets. The company now achieves market shares of up to 22% (for housekeeping in Portugal).

⁵ Until divestiture of Unilever's 33% shareholding in Johnson Wax/ DiverseyLever, there will be a structural link between Unilever and the merged entity.

32. As regards the consumer detergents companies, the market investigation has found that a number of these companies, including Procter & Gamble and Colgate, do indeed target the lower end of the institutional markets, where smaller customers (e.g. pubs, restaurants, small hotels) attach a certain value to established brands and purchase the relevant products through cash & carry outlets.. The major consumer detergent companies are therefore actual or potential competitors for a limited number of (mainly smaller) institutional customers and products. They possess distribution and marketing power across the EEA.
33. The market investigation has thus confirmed that Johnson Wax and DiverseyLever will face considerable competitive pressure by Ecolab, who is at least as strong as the combined entity on all the product markets and, as a consequence, is able to respond to any competitive move by the combined entity. The presence of numerous local and regional players who face low barriers to product and geographic expansion and of large consumer detergent companies exerts further competitive pressure.
34. Furthermore, any price increase imposed jointly by Johnson Wax/ DiverseyLever and Ecolab would be countered by increased supply from i) local manufacturers and ii) consumer detergent companies. In addition, those large customers (such as international hotel chains, catering companies etc.) for whom products offered by the consumer detergent suppliers are no viable substitutes have significant buyer power and none of these customers have raised concerns against the proposed transaction.
35. It follows from the above that the operation does not create or strengthen a position of single dominance by Johnson Wax/ DiverseyLever or a position of joint dominance by Johnson Wax/ DiverseyLever and Ecolab, as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. CONCLUSION

36. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission