

***Case No COMP/M.4193 -  
L'OREAL / THE BODY  
SHOP***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 31/05/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.05.2006

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4193 - L'Oréal / The Body Shop  
Notification of 20/04/2006 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 20.04.2006, the French company L'Oréal SA ("L'Oréal") notified its intention to acquire the British company The Body Shop International Plc ("The Body Shop"), within the meaning of article 3(1)(b) of Council Regulation (EC) No 139/2004 ("the Merger Regulation").

## I. THE PARTIES

2. **L'Oréal** is a French company active in the research, development, manufacturing, marketing, distribution and sale of cosmetics products on a world-wide scale. Its main brands include *L'Oréal*, *Lancôme*, *Biotherm*, *H. Rubinstein*, *Kerastase* and *Maybelline*.
3. **The Body Shop** is a British company active in the marketing, distribution and sale of cosmetics products under that brand name through a network of 2,085 owned and franchised single-brand The Body Shop stores on a world-wide scale.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

## II. THE OPERATION AND THE CONCENTRATION

4. The operation consists of the acquisition of sole control by L'Oréal of The Body Shop, by way of a cash offer for the entire issued and ordinary share capital, announced on 17.03.2006. In addition, L'Oréal has received irrevocable undertakings from the founders and directors<sup>2</sup> of The Body Shop to accept the offer in respect of 21.6% of the total existing share capital and has been granted by Beaverbridge Holdings Limited, who holds 21% of The Body Shop shares, a call option to tender the shares. Furthermore, L'Oréal acquired on 22.03.2006 10.5% of The Body Shop existing share capital. Therefore, after the completion of the proposed concentration, L'Oréal will directly own more than 50% of the shares in The Body Shop.
5. The notified operation is intended to confer to L'Oréal sole control over The Body Shop. It would therefore constitute a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup> (L'Oréal, EUR 14.53 billion; The Body Shop, EUR 615.93 million). Each of them have a Community-wide turnover in excess of EUR 250 million (L'Oréal, EUR [...]; The Body Shop, EUR [...]) and only The Body Shop achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State (United Kingdom, EUR [...]). The notified operation therefore has a Community dimension.

## IV. COMPETITIVE ASSESSMENT

7. The parties to the concentration are active in different cosmetics product markets and to a lesser extent on the retail sales of beauty and toiletry products.

### A. Relevant product markets

8. On the basis of past Commission's decisions in the cosmetics sector<sup>4</sup> and their knowledge of the markets, the parties consider that the following product markets are relevant for the purpose of the market definition:
  - a. Hair care products
  - b. Colour cosmetics
  - c. Sun care products

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<sup>2</sup> Dame Anita Roddick and Gordon Roddick currently hold 18% of The Body Shop share capital and all of the directors hold an additional 3.6%.

<sup>3</sup> 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.

<sup>4</sup> Commission's decisions of 30.07.2003 in case COMP/M.3149 Procter&Gamble/Wella, of 18.10.1995 in case IV/M.630 Henkel/Schwarzkopf and of 23.02.1992 in case IV/M.186 Henkel/Nobel.

- d. Facial care products
  - e. Body care products
  - f. Hand care products
  - g. Bath and shower products
  - h. Men's care products
  - i. Deodorants
  - j. Perfumes.
9. As far as some product markets are concerned, the parties suggest a further splitting based on different end-uses: hair care products may be split into shampoos, conditioners and treatments, styling products and colorants and by distribution channels (hairdresser/general retailing); colour cosmetics in facial make-up, eye make-up, lip products and nail products; sun care products in sun protectors, after-sun products and self-tanning products; facial care products in treatment products and cleansing products; men's care products in shaving, toiletries, bath and shower, deodorants, hair care and skin care and perfumes in fragrances for women in a mass category, fragrances for women in a prestige category, fragrances for men in a mass category, and fragrances for men in a prestige category. While the parties do not consider that these narrower market definitions are in all cases relevant, they nevertheless submit data in relation to these narrower markets.
10. The market investigation has largely confirmed the market definition suggested by the parties<sup>5</sup>. Therefore, the markets for the cosmetics products will be defined on the basis of the parties' submission for the purposes of this case.
11. As far as the retailing of beauty and toiletry products is concerned, the Commission, in case COMP/M.3716 – AS Watson/Marionnaud, has considered, while leaving the exact definition open, the existence of distinct markets for the retail sales of (i) luxury perfumes and cosmetics products and (ii) mass market health and beauty products. Given the fact that L'Oréal is virtually absent from the retail market, the question of the segmentation of the retail market can be left open.

## **B. Relevant geographic markets**

12. The parties submit that the markets for cosmetics products should be defined as European, considering the following factors: same competitors, products and brands all over Europe, converging prices and margins among Member States, central manufacturing, central purchasing by large multi-national customers and integrated regulatory framework. However, the Commission in its previous decisions relating to consumer goods and in particular in the cosmetic products sector, has either considered the markets to be national in scope<sup>6</sup> or found strong indications for a national definition<sup>7</sup>.

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<sup>5</sup> Around 85% of all the answers received to the Article 11 letter dated of 26<sup>th</sup> April to customers and competitors agreed to the suggested market definition.

<sup>6</sup> Commission's decision of 15.07.2005 in case No COMP/M.3732 Procter & Gamble /Gillette.

<sup>7</sup> Commission's decision of 30.07.2003 in case COMP/M.3149 Procter&Gamble/Wella.

13. The market investigation has not brought clear evidence that the markets for cosmetics products are wider than national.<sup>8</sup> However, the question of the geographic market definition can be left open given that, on the basis of the alternative geographic market definitions considered, the concentration does not give rise to competition concerns.

### **C. Competitive assessment**

#### *Horizontal effects*

#### **Markets for the sale of cosmetics products**

14. Both L'Oréal and The Body Shop are active in the production and distribution of cosmetics products. However, due to their different positioning and their distinct strategies, the market investigation indicated that they are not considered as being close competitors.
15. While L'Oréal is selling its products through various retailers (mass market, specialised retail, pharmacies and professional hairdressers' salons), The Body Shop is marketing its products exclusively through its own or franchised stores. It appears that L'Oréal and The Body Shop cosmetics products are not close competitors because of the distinctive image of The Body Shop brand, which will rather complement L'Oréal product portfolio with a brand with a strong reputation of naturally-oriented cosmetics products. This is confirmed by an internal document<sup>9</sup> of the parties, where L'Oréal states that The Body Shop brand is very complementary to its portfolio of current brands as it has the following characteristics: British, natural, sensorial and ethical. It follows that, as a result of the merger, the new entity will in fact not add a new brand to its portfolio when marketing its L'Oréal products to its usual customers as, according to the parties these products will not be sold to the same customers and via the same distribution channels.
16. Moreover, on the basis of all the alternative possible market definitions, the proposed transaction will only lead to a limited number of horizontal overlaps in few cosmetics markets in a small number of Member States and none at European level. In fact, The Body Shop is a relatively small market player compared to the main cosmetics suppliers such as Procter & Gamble, Johnson & Johnson, Unilever or LVMH. The Body Shop sales in the global cosmetics sector, including all cosmetics categories mentioned above, will only lead to a marginal increase of L'Oréal's position<sup>10</sup>. In addition The Body Shop is only marketing its products through a network of 821 The Body Shop stores (out of which more than a third are located in the United Kingdom) and the impact of the operation will be limited to the Member States where The Body Shop is present with a

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<sup>8</sup> Around 50% of all the answers received to the Article 11 letter dated of 26<sup>th</sup> April to customers and competitors agreed to the suggested market definition.

<sup>9</sup> Presentation made on "Project Bali" by L'Oréal's General Manager for Acquisitions and External Development to L'Oréal's Board of Directors on 16 March 2006.

<sup>10</sup> On an EEA basis, L'Oréal has a [10-20]% market share of the market for the sale of all cosmetics and The Body Shop [0-5]%. On a national basis, the overlap does not exceed [0-5]%.

significant number of stores compared to the size of the market (Finland, 31; Greece, 54; Norway, 31; Iceland, 3 and Malta, 4).

17. In the UK, the operation will only lead to an overlap in excess of 5% in the market for lip products (L'Oréal, [10-20]%; The Body Shop, [5-10]%). However the merged entity will face competition of Boots ([10-20]%) and Avon ([10-20]%).
18. In Finland, the operation will lead to overlaps in the markets for the sale of:
  - shampoo (L'Oréal, [20-30]%; The Body Shop, [5-10]%) where the merged entity will face competition of several actors such as Procter & Gamble ([10-20]%), Alberto Culver (10-20)%) and Unilever ([10-20]%),
  - sun care products (L'Oréal, [20-30]%; The Body Shop, [5-10]%). The market leader will remain Beiersdorf ([30-40]%) which is also the next closest competitor to the parties on the narrower markets for aftersun products (L'Oréal, [20-30]%; The Body Shop, [5-10]%) and for self tanning products (L'Oréal, [30-40]%; The Body Shop, [5-10]%).
  - men's hair care products (L'Oréal, [20-30]%; The Body Shop, [10-20]%), where the merged entity will face competition of Procter & Gamble ([20-30]%).
  - mass women fragrances (L'Oréal, [20-30]%; The Body Shop, [5-10]%), where the merged entity will face competition of Revlon ([10-20]%).
19. In Greece, the operation will lead to an overlap in the market for the sale of self-tanning products (L'Oréal, [20-30]%; The Body Shop, [10-20]%). However the merged entity will face competition of Estée Lauder ([10-20]%) and Johnson & Johnson (10-20]%).
20. In Norway, the most significant overlap will be in the market for the sale of men's hair care products (L'Oréal, [10-20]%; The Body Shop, [10-20]%). However the market leader will remain Sara lee ([50-60]%). The operation will also lead to an overlap in the market for the sale of men's skin care products (L'Oréal, [10-20]%; The Body Shop, [5-10]%) in which the market leader will remain Beiersdorf ([70-80]%).
21. In Iceland, in the market for the sale of body care products, the merged entity (L'Oréal, [10-20]%; The Body Shop, [20-30]%) will face strong competition from large competitors, such as Beiersdorf (through its *Nivea* brand) with [20-30] market share and Unilever with (through its *Dove* brand) with [10-20] market share.
22. As to Malta, the main overlaps will be in the market for colour cosmetics (L'Oréal, [30-40]%; The Body Shop, [5-10]%), where the merged entity will still face competition from Revlon and Coty, and in the market for body care products (L'Oréal, [10-20]%; The Body Shop, [5-10]%), where the market leader will remain Beiersdorf.
23. In addition to the presence of large competitors, the parties submit that the cosmetics markets present a boosting trend and that there are major growth opportunities in a number of segments and large investment in the development, innovation and sales of new products in response to the identification of new needs. Additionally, the parties are of the view that there are no major barriers to entry and that any competitor might enter the market and achieve important market shares within short term.
24. Data submitted by the parties clearly reflect the growing trend of the cosmetics market: for example, between 2003 and 2005, the size of the market for facial care products in Europe has grown by 11%, the market for colour cosmetics by 7% and the market for

men's grooming products by 10%. As a competitor submits, "the market is demand-driven and characterized by frequent and unpredictable fashion trends. This has led incumbents to launch new products on a regular basis as well as frequent new entry on the markets". Customers also tend to share this view, only 2 out of 37 indicated that market would be declining, whereas 15 considered that the market was boosting.<sup>11</sup> However, market investigation has also shown that various regulatory rules, high investment in marketing and advertisement costs, particular importance of developing a brand image and the necessity to have access to well-developed distribution channels represent barriers to entry.

25. Therefore, in none of the markets for the sale of cosmetics products will the operation be likely to significantly impede effective competition.

### **Markets of the retailing of cosmetics products**

26. The parties are both active in the retailing of cosmetics products, however the concentration will not give rise to any affected market as L'Oréal is only marginally active on this market with 8 mono-brand stores<sup>12</sup> in the EEA.

#### *Vertical effects*

27. The proposed transaction will lead to a vertical relationship, as L'Oréal has market shares above 25% in some of the markets for cosmetics products<sup>13</sup> which are upstream to the market for the retailing of beauty and toiletry products where The Body Shop is active with 821 stores in the EEA. The value of sales through the network of The Body Shop represents less than 4% of all retail sales in the individual Member States.
28. The parties consider that this vertical relationship is only hypothetical, as L'Oréal intends to preserve The Body Shop as a mono-brand retail network that will keep distributing the Body Shop branded products and no other competitors' brands, L'Oréal included. Given the limited size and geographic coverage of The Body Shop network, it would probably not be economically rational for the new entity to decide to distribute L'Oréal products only via The Body Shop stores' network. Therefore, other retailers would not be affected by the concentration.
29. Furthermore, due to the size and the current mono-branding nature of the Body Shop network, the concentration is unlikely to foreclose the competitors to have access to distribution channels.<sup>14</sup> In fact, pre merger, L'Oréal's competitors did not have access to The Body Shop stores network for the retailing of their cosmetics products, but had

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<sup>11</sup> Article 11 letter dated of 26<sup>th</sup> April to customers.

<sup>12</sup> L'Oréal operates these stores under the Biotherm, Lancôme, Kiehl's and Shu Unemura brands.

<sup>13</sup> L'Oréal has significant market shares on a number of markets, such as, colour cosmetics in Belgium ([50-60]%) and in France ([40-50]%), hair care in Belgium ([40-50]%), in France ([50-60]%) and in Italy ([40-50]%), facial care in Denmark ([40-50]%), sun care in Denmark ([40-50]%) in Ireland ([50-60]%) and in Portugal ([40-50]%).

<sup>14</sup> L'Oréal estimates that its products are sold in [450,000-750,00] outlets in the European Union (Form CO, p.34).

access to a number of alternative distribution channels, such as mass market, specialised stores and pharmacies. Therefore the transaction will not change the structure of the cosmetics products' distribution or affect the access of cosmetics suppliers to retail channels.

30. Therefore, the Commission considers that the operation is unlikely to affect the competitive position of distributors or to lead to any vertical foreclosure of competitors.

## **V. CONCLUSION**

31. 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 (EC) No 139/2004.

For the Commission,  
signed  
Neelie KROES  
Member of the Commission