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***Case No COMP/M.7028 - CVC/ CERTAIN EUROPEAN
SUBSIDIARIES OF CAMPBELL SOUP***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/10/2013

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EUROPEAN COMMISSION

Brussels, 25.10.2013
C(2013) 7245 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.7028 - CVC/ Certain European subsidiaries of Campbell Soup
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹**

- (1) On 20 September 2013, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking CVC Capital Partners SICAV-FIS S.A. ("CVC", Luxembourg), part of the CVC group, acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertakings Campbell Belgium Holding BVBA (Belgium), Campbell France Holding S.A.S. (France) and Campbell Finance B.V. (Netherlands) (together referred to as the "Target") by way of purchase of shares. CVC is also referred to as the "Notifying Party". CVC and the Target are hereinafter together referred to as the "Parties".

1. THE PARTIES

- (2) CVC provides investment advice to and manages investments on behalf of investment funds (the "CVC Funds"). The CVC Funds hold controlling interests in a number of companies in various industries including chemicals, utilities,

¹ OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

manufacturing, retailing and distribution, primarily in Europe and the Asia-Pacific region.

- (3) The Target comprises the continental European business (excluding biscuits) of the Campbell Soup Company, a producer of packaged foods. The Target is headquartered in Puurs, Belgium, with principal operations in France, Belgium, Germany, Sweden and Finland (and further sales in other EU Member States). The Target produces wet and dry (regular and instant) soups, stews (Eintopf), snacks, wet and dry sauces, bouillon, dry mix desserts, tray meals, baby food, and vegetable-based shelf stable juices.

2. THE CONCENTRATION

- (4) The proposed transaction consists of the acquisition of sole control by CVC over the Target.
- (5) [...] signed an offer letter on 12 August 2013, which provides Campbell Soup Company, CSC Brands LP and Campbell Investment Company (the sellers) with a put option whereby, upon completion of the relevant information and consultation processes, the sellers shall be entitled to sell the Target to CVC in accordance with the terms and conditions of the agreed form Sale and Purchase Agreement (SPA).
- (6) Pursuant to the SPA, [...] will acquire indirectly from the sellers the total issued and outstanding share capital of each of the companies constituting the Target², therefore acquiring sole control over each of them.
- (7) The proposed transaction therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (CVC: EUR [...], Target: EUR [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (CVC: EUR [...], Target: EUR [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Art 1(2) of the Merger Regulation.

² Campbell Foods Belgium has minority shareholders representing approximately 0.11%. None of these minority shareholders hold veto rights or any other powers that would confer them any form of control.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

4. COMPETITIVE ASSESSMENT

- (9) The transaction does not give rise to horizontal overlaps. However, there are limited vertical links between the activities of the Target and one of CVC [...] companies, namely Autobar, which is active in vending machine services.⁴
- (10) Although Autobar is not an actual customer of the Target, it purchases, among other products, instant dry soups for sale in its vending machines. As the Target produces and sells instant dry soups, Autobar's activities are vertically related to those of the Target.

4.1. Product and geographic market definitions (downstream)

- (11) Vending machine services refer to the sale of products at an unattended point of sale through a machine operated by coins or other means of payment.⁵ In COMP/M.5973 – CVC / Charden International, the Commission also discussed whether vending services could be further sub-segmented according to the type of product sold i.e. vending of hot beverages, cold drinks and snacks/food (including confectionery). The market definition was, however, ultimately left open.⁶
- (12) Autobar is active in vending machine services primarily in Europe. Within the EEA, Autobar is active in Belgium, Denmark, Finland, France, Germany, Ireland, the Netherlands, Norway, Spain, Sweden and the UK.⁷
- (13) In previous decisions, the Commission has concluded that the relevant geographical market for vending machine services is national in scope due to differences in legislation, culture and security requirements among different EU

⁴ For the sake of good order, it is noted that two other companies in CVC [...] portfolio, namely Grupo Zena and Univar, have activities which are in a vertical relationship with those of the Target. Grupo Zena is a Spanish multi-brand restaurant group that is only active in Spain, though it makes purchases also in the Netherlands. The Target's market shares in sales to each of the food service segments in both Spain and the Netherlands is below [0-5]% and Grupo Zena's share of the purchasing market of products manufactured by the Target is below [5-10]% both in Spain and in the Netherlands. Univar, on the other hand, is a chemicals distribution company active in the distribution of commodity and speciality chemicals. Univar's market shares stay below 25% (the highest being in specialty chemicals in Sweden, [20-30]%, and Belgium, [10-20]%) while the Target purchases less than [0-5]% of both specialty and commodity chemicals. Therefore, these vertical links do not give rise to vertically affected markets and they are not discussed further in this decision.

⁵ See, e.g. Case No. COMP/M.5973 – CVC / Charden International, paragraphs 11–2; Case No. COMP/M.4202 – Charterhouse / Elixir, paragraph 13; and Case No. COMP/M.2373 – Compass/Selecta, paragraph 13. In *Compass/Selecta* (see paragraph 16), the Commission's market investigation showed that a potential segmentation of vending services between full vending services (comprising the supply and installation of vending machines, the cleaning and maintenance of such machines, the management and supply or procurement of products/ingredients to stock the machines and the collection of cash takings or other means of payment) and ancillary vending services (which refers to the use of vending machines as part of a wider foodservice offering and typically comprises the procurement of products/ingredients to stock the machines and some cleaning services) is not a relevant consideration for the purpose of the market definition.

⁶ Case No. COMP/M. 5973 – CVC / Charden International, paragraph 13.

⁷ Note for completeness that Autobar has recently started a small business in Portugal which is yet to generate any market presence whatsoever and does not involve the purchase of instant dry soups.

countries and the need to have staff available in the proximity of the point of vending machines.⁸

- (14) The Notifying Party agrees that the relevant geographic market for vending machine services is national in scope. Nevertheless, the exact market definition can be left open since no competition concerns have been identified even under the narrowest reasonable market definitions.

4.2. Product and geographic market definitions (upstream)

- (15) Instant dry soups are typically sold for consumption in single portions and are seen as a savoury alternative to tea or coffee. They are ready-to-drink products, requiring the addition of boiling water in a mug. The Commission has previously considered them distinct from other types of soups, such as ambient wet soups and regular dry soups.⁹ Furthermore, the Commission has previously sub-segmented soup for sale to the food service sector into ingredient based soups, "ready-to" soups and instant soups.¹⁰

- (16) In past decisions in the food sector, the Commission has considered the relevant geographic market definition for food products to be national both for the retail and the food service sector.¹¹ The Notifying Party agrees with this market definition. However, the exact market definition can be left open since no competition concerns have been identified even under the narrowest reasonable market definitions.

4.3. Competitive assessment

- (17) The proposed transaction would give rise to vertically affected markets in Belgium, Finland and the Netherlands.

4.3.1. Belgium

- (18) The Target is active in the Belgian market for instant dry soups with its brands Royco and Liebeg. Its estimated market share in the supply of instant dry soups to the food service sector is approximately [70-80]% in value (EUR [...]). Autobar is a purchaser of instant dry soups in Belgium. Autobar's estimated market share for vending machine services in Belgium is [10-20]%. Its share of purchases of instant dry soup sold to the food service sector is estimated at around [0-5]%.

- (19) However, the Notifying Party submits that the Target's activities in the supply of instant dry soup to the food service sector in Belgium focus not on sale for use in vending machines, but on sales to restaurants and cafes. The Target estimates the market segment in Belgium for the sale of instant dry soups specifically in the vending machine channel within the food service sector to be around [...] units per

⁸ Case No. COMP/M. 2373 – *Compass/Selecta* paragraph 27, Case No. COMP/M. 5973 – *CVC / Charden International*, paragraph 16. In Case No. COMP/M.4202 – *Charterhouse / Elior*, paragraph 23, a similar finding was made but the market definition was ultimately left open.

⁹ Case No. COMP/M.1990 – *Unilever / Bestfoods*, paragraphs 14–17.

¹⁰ Case No. COMP/M.1990 – *Unilever / Bestfoods*, paragraph 47.

¹¹ Case No COMP/M.1990 *Unilever / Bestfoods*, paragraphs 57 and 59, and Case No. COMP/M.3658 – *Orkla / Chips*, paragraph 17

year, of which the Target estimates it only has a [10-20]% share ([...] units). If one were to consider this narrow segment of the sale of instant dry soups in the vending machine channel, no affected market would even arise.

- (20) The Notifying Party also submits that the Target's main competitors in the instant dry soup sector, Nestlé (with its Maggi brand) and Unilever (with its Knorr brand), are active in the provision of instant dry soups through the vending machine channel. It estimates that both Nestlé's and Unilever's market shares of supply of instant dry soups to the food service sector remain below [10-20]% but is unable to estimate their potential share in the sale of instant dry soups through the vending machine channel.
- (21) As regards the provision of vending machine services, companies such as Coca-Cola ([10-20]%), Sodexo ([5-10]%), Maas International ([5-10]%), Drink O Mat ([5-10]%) and Aramark ([0-5]%) are all active on the Belgian market.
- (22) Given the Target's strong position in the provision of instant dry soups to the food service sector in general, a limited market investigation was conducted with Autobars' main competitors. None of those expressed any concerns relating to the transaction and confirmed that alternative suppliers to the Target exist.
- (23) The Commission considers that given (i) the Target's limited market shares relating to sales of instant dry soups through the vending machine channel; (ii) Autobars' limited share of purchases of instant dry soups; (iii) Autobars' limited market share in vending machine services; (iv) the existence of alternative suppliers of instant dry soups, such as Nestlé and Unilever; and (v) the existence of alternative competitors in the supply of vending machine services, the merged entity is unlikely to have the ability or incentive to engage in input or customer foreclosure.

4.3.2. *Finland*

- (24) Autobars is active in the Finnish market for the supply of vending machine services, and has a market share of approximately [30-40]% while the Target is active in the supply of instant dry soup to the food service sector in Finland with a market share of around [10-20]% in value (less than EUR [...]). Autobars is not a significant purchaser of instant dry soups in Finland; its share of purchases of instant dry soup sold to the food service sector is estimated at less than [0-5]%.
- (25) The Notifying Party submits that the proposed transaction does not give rise to any foreclosure concerns in Finland since the Target has a market share of 10% in the supply of instant dry soup to the food service sector and alternative suppliers of instant dry soups, such as Nestlé and Unilever, are active in the market in Finland. Moreover, the Notifying Party submits that the Target is not active in the supply of instant dry soup to the vending machine channel in Finland. According to the Notifying Party, there are also many alternative vending machine services providers, such as Vendor Oy ([20-30]%), Selecta Oy ([10-20]%), Premium Coffee Oy ([0-5]%), Coffee Place Oy ([0-5]%) and Cafe Break Finland Oy ([0-5]%).
- (26) The Commission considers that given (i) that the Target has no sales relating to instant dry soups through the vending machine channel; (ii) Autobars' limited share of purchases of instant dry soups; (iii) the existence of alternative suppliers of instant dry soups, such as Nestlé and Unilever; and (iv) the existence of alternative

competitors in the supply of vending machine services, the merged entity is unlikely to have the ability or incentive to engage in input or customer foreclosure.

4.3.3. *The Netherlands*

- (27) Autobar is active in the Dutch market for the supply of vending machine services, and has a market share of approximately [20-30]% while the Target is active in the supply of instant dry soup to the food service sector in the Netherlands with a market share of less than [0-5]% in value (less than EUR [...]). Autobar's share of purchases of instant dry soup sold to the food service sector is estimated at around [10-20]%.
- (28) The Notifying Party submits that the proposed transaction does not give rise to any foreclosure concerns given that the Target has less than [0-5]% of market shares in the supply of instant dry soup to the food service sector, and that alternative suppliers of instant dry soups, such as Nestlé and Unilever, are active in the market in the Netherlands. Moreover, there are many alternative vending machine services providers active in the downstream market in the Netherlands, such as Douwe Egberts Netherlands BV ([10-20]%), Maas Automaten ([10-20]%), Selecta ([10-20]%), Nestle Nederland BV ([5-10]%) and Fortune ([5-10]%).
- (29) The Commission considers that given (i) the Target's limited market shares relating to sales of instant dry soups to the food service sector, let alone through the vending machine channel; (ii) Autobar's relatively limited share of purchases of instant dry soups; (iii) Autobar's relatively limited market share in vending machine services; (iv) the existence of alternative suppliers of instant dry soups, such as Nestlé and Unilever; and (v) the existence of alternative competitors in the supply of vending machine services, the merged entity is unlikely to have the ability or incentive to engage in input or customer foreclosure.

4.3.4. *Conclusion*

- (30) The proposed transaction is unlikely to result in the merged entity having the ability or the incentive to engage in input and/or customer foreclosure in any of the relevant markets. Therefore, it is unlikely that the transaction would lead to a significant impediment to effective competition.

5. **CONCLUSION**

- (31) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission
(signed)
Joaquín ALMUNIA
Vice-President