EN

Case No IV/M.704 - Unilever / Diversey

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.03.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: **Case IV/M.704 - UNILEVER/DIVERSEY**
Your notification of 19 February 1996 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 19.02.1996 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation EC No. 4064/89 by which Unilever PLC via Unilever Canada Limited, Toronto (Canada) will acquire the majority of the worldwide institutional and industrial (I+I) detergent business of the Diversey Corporation, Mississauga (Canada), a subsidiary of the Canada based Molson group, by way of purchase of assets including the share capital of certain subsidiary companies.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I THE PARTIES' ACTIVITIES AND THE OPERATION

3. Unilever is a holding company worldwide active in foods (52%), detergents (22%), personal products (15%) and specialty chemicals (9%) besides other operations covering 2% of the turnover of nearly 35800 MECU. Unilever's activity in I&I detergents is conducted through Lever.

4. Molson/Diversey is a diversified Canadian public corporation covering brewing (30%), Diversey's chemical specialties (55%), retailing (13%), sports and entertainment (2%) and less than 1% of other businesses by its turnover of about 1600 MECU. The acquired business makes about 685 MECU of Diversey's 888 MECU total turnover. Diversey will retain the Novomax-business of cleaning and surface treatment products and systems to the metal finishing treatment industry and the water management services business in the US, Canada, UK and Italy. Furthermore, Diversey will retain the institutional and laundry business in the US.

5. Therefore the operations covers basically the I+I detergent business outside the U.S. and Canada. The consideration for the acquisition will be about 434 MECU and the amount of assumed liabilities. It forms a separate business to which its market turnover is clearly attributed. The acquiring of control therefore creates a concentration under Art. 3 of the Merger Regulation.

II COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5000 MECU. Each party also has a Community-wide turnover in excess of 250 MECU (Unilever: 16780 MECU; Diversey business: 268 MECU), but 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. It does not constitute a cooperation case under the EEA Agreement.

III THE RELEVANT MARKETS

a) Relevant Product Market

7. The Industrial and Institutional detergents market comprises the supply of cleaning and hygiene products and systems to an industrial sector and an institutional sector. The notifying party identified a number of affected markets according to the following break-down.

8. The industrial hygiene sector, which consists of the products addressed to industrial customers such as commercial laundries, food and beverage producers, etc., and can be further segmented into the following markets:

   - Food and beverage hygiene markets, comprising detergents, disinfectants and specialist application equipment supplied to food and beverage producers. The notifying party suggests a further distinction between the markets for process foods hygiene, beverage hygiene, dairy hygiene and agriculture hygiene products.

   - Professional laundry detergents market, products for self-contained, professionally-run, profit generating businesses involving the washing of very large volumes for a number of establishments.

9. The institutional sector, which comprises detergent products supplied to institutional customers such as hotels, restaurants, hospitals and schools, and can be subdivided as follows:

- Kitchen hygiene market, or those products for machine ware washing, oven and grill cleaning, etc.

- On premises laundry (OPL) market, involving products used for the washing of small volumes of such items as bed linen, clothing, etc., usually for only one establishment.

- Housekeeping hygiene market, or those products supplied to customers who require hygiene standards to be professionally maintained in areas such as receptions, corridors, bedrooms and washrooms.

10. The Commission has investigated to which extent this break-down is appropriate, in particular whether the above sectors constitute separate product markets or should be considered as sub-segments of wider groups.

11. A certain degree of substitutability exists between products used in the different Institutional hygiene markets and, to a very limited extent, even between Industrial and Institutional hygiene products. Nevertheless, the formulation and marketing of a significant proportion of I & I detergent products on a sector specific basis and the structure of supply and demand within each of the sectors are arguments in favour of the narrower option above.

12 Within each market, there are individual products that would normally not be regarded as substitutable by customers because of their specific applications. However, for the purposes of this decision, and given that suppliers within each market tend to offer a full range of products, the market definition proposed by the notifying party is considered sufficient. Customers and competitors contacted by the Commission in its enquiry have confirmed the relevance of this approach.

b) Relevant Geographic markets

13. The notifying party has identified a number of affected markets at national level, while defending for others a broader geographic definition.

14. The notification recognises that there is a clear trend towards EEA-wide geographic markets for I & I detergents. Indeed, most I & I detergent suppliers operating throughout the EEA have harmonised their branding on a European (or wider) level so that "umbrella" brands are common throughout the EEA; on the other hand legislative requirements relating to production, packaging and transport of detergents have largely been harmonised at EEA level; moreover, it seems that a number of detergents customers contract on a geographical basis broader than individual Member States. Consequently the notifying party has defined the following areas as relevant geographic markets: a) the United Kingdom and Ireland; b) the Benelux countries; c) the Central European countries (Germany and Austria), and d) the Scandinavian countries.

15. Nevertheless, costs of transportation, different national legislative requirements still in force and the need to service customers on a regional or national basis would imply that some I & I markets are still more appropriately considered on a national basis. The Commission's enquiry has confirmed that most competitors price their products on a national basis, although there is a trend towards harmonisation at European level.

16. It seems clear from the above that both the Industrial and Institutional detergent markets are to be considered as at least national, bearing in mind that barriers to entry from one country into a neighbouring country are negligible. In view of these circumstances and given the absence of major competition concerns at either national or European level level, the geographical reference market definition can be left open for the purposes of this assessment.

IV ASSESSMENT

Market shares

17. The parties combined turnover in I&I detergents overall in the EU amounts to 394.8 million Ecus for Lever and to 268.5 million Ecus for Diversey. Their combined turnover would represent 663 mecus, with an overall share of sales in the industry of 22%. Henkel Ecolab, the second main player would have a share of 20% (parties estimates). The two other main competitors in the sector would be SC Johnson and Laporte, with turnovers well below that of the parties. In addition, there are hundreds of smaller players with a presence in just one or two member States (such as Hypred, Dr. Weigert, Holchem, Th. Goldsmidt, ISS Darenas, Hispano Quimica,etc...)

18. The parties have provided market shares on a national basis. According to the notification, their highest shares would be attained in the smaller countries of the EU such as Portugal, Benelux and certain Scandinavian countries (see table attached). Significant overlap and high market shares are attained in Sweden, Norway and Portugal.

19. It is difficult to calculate market shares for the I&I detergents markets because of the absence of figures for the total market value. This has been confirmed by virtually all the competitors consulted by the Commission. Market estimates are normally based on extrapolations of the limited information available to each company. Market estimates vary widely among the different competitors for specific markets (processed foods, beverages, etc...). As a rule, the market estimates provided by the parties are conservative when compared with estimates provided by their competitors, so their market shares as provided in the notification appear to be overestimated.

20. The merged entity will in any case be confronted with Henkel-Ecolab, who suffers no significant constraint in terms of capacity, technology, expertise or financial resources to compete on an equal footing with the merged entity in all the markets where the merged entity will be present. Given the supply structure described above, the creation or reinforcement of a single dominant position through the notified transaction can be excluded.

21. The possible creation of a duopolistic dominant position by Henkel-Ecolab and the merged entity has been considered by the Commission. Through the notified transaction, the number 2 (Lever) and number 3 (Diversey) suppliers would become closer in size to the leader Henkel-Ecolab. Together, the groups would account for about 40-45% of supplies of I&I detergents in the EU. In certain of the smaller Member States (notably Portugal, Sweden, Finland, Denmark, Benelux countries and Greece) and in the UK/Ireland region, they would account for between half and two-thirds of the supplies in individual product markets as identified above.

22. Even if the structure of supply post-merger is indicative of high concentration ratios, other elements point to the absence of possible creation of a collective dominant

position. Foremost, the markets are remarkably non-transparent in terms of overall demand evolution and quantities sold. Prices are not transparent either, in view of the wide range of solutions available to an specific customer for its hygiene system and the relative significance of product customization. Customers have a number of options, which range from the purchasing of a full system (i.e. the engineering systems, the detergents and the technical service) from one single supplier, including the smaller suppliers, to purchasing equipment from specialised engineering companies, purchasing the bulk of the detergents in the form of raw materials from chemical dealers and formulating the detergent themselves, and obtaining service from a third company.

23. In this respect, the Commission has investigated in particular whether the parties would have a distinct advantage in the technological performance of their systems or their chemical products, or if there is any link between the supply of the engineering system and the detergent products used. Customers and competitors of the parties, including the smaller competitors, have informed the Commission that such is not the case. There are smaller suppliers of I&I detergents with the technological capability to compete with Henkel-Ecolab and Diversey/Lever. In addition, there is no lock-in effect between the engineering system purchased and the type of detergents that can be used. Small adaptations of the detergents render them suitable for use in a specific system.

24. Also the purchasing patterns of customers militate against the creation of a collective dominant position. Customers tend to concentrate their supplies in one or two suppliers, and use the other suppliers as leverage in price negotiations. Nearly all the customers contacted by the Commission in its enquiry have stated that they know I&I detergent manufacturers which are not supplying them at present, but that would be an alternative if they wanted to switch their orders away from Diversey or Unilever. Some of the smaller competitors also expect that they might increase their sales as a result of the merger.

25. Finally, even if Henkel-Ecolab and Lever/Diversey would achieve a similar size in the I&I detergent market, it has to be noted that the overall composition of their groups is very different, and therefore it cannot be presumed that both companies will have a common interest in pursuing common strategies. Unilever has important interests in the downstream food processing industry whilst Henkel-Ecolab is vertically integrated in the upstream market of basic chemicals.

Barriers to entry

26. Barriers to entry seem to be relatively low by comparison to other markets. Raw materials (commodity chemicals) are sufficiently available, and clients do sometimes purchase directly from chemical companies who, according to the parties and some of their competitors, constitute a significant competitve force. Research and technology or advertising seem to play a limited role and involve relatively low expenses in terms of turnover.

27. In particular entry into one product market from other product markets is said to involve relatively small costs. Estimates of costs involved into entry into a national market provided by the parties and their competitors are in the range of 0.15- 10 million Ecus, depending on the assumptions made. Including the formation of a sales force.

28. The existence of hundreds of small companies in the I&I detergent industry also indicates that scale is not a requirement for viability and that barriers to entry are not of a significant concern.

Vertical aspects

29. Lever group is a manufacturer of processed food products and to a lesser extent, of beverages. The acquisition by Lever of Diversey implies that a significant non-vertically integrated supplier of I&I detergents is removeed from the market as such. This is perceived by some cutomers of Diversey as involving certain risks, since they will be supplied with detergents by a competitor in the downstream market. The need for maintenance service and technical backup for hygiene systems, implies that Unilever might gain sensitive commercial knowledge about its competitors (for instance it would know what sort of machinery competitors are using and whether they are having difficulties with their manufacturing process).

30. In the Commission's view, these claims are too general to be taken into account in assessing the notified transaction. There are many industries where companies with different degrees of vertical integration are competing. Moreover, in the present case, there are several non-vertically integrated suppliers of I&I detergents which, although certain adaptation costs would be incurred, would provide alternative sources of supply for customers.

V ANCILLARY RESTRAINTS

31. Under the terms of Article 9.15 of the Purchase agreement, the Molson Companies Limited undertakes not to compete with the transferred business for a period of 5 years from the closing date. This clause is in line with point III.A. of the Commission notice regarding restrictions ancillary to concentrations and can therefore be considered as ancillary to the concentration.

32. The notifying party has requested the Commission to declare as ancillary to the concentration a non-exclusive Manufacturing and Supply Agreement requiring Unilever Canada Limited to manufacture and supply to the retained business for an initial period of three years, two Intellectual Property Licence Agreements by which Unilever Canada Limited will grant an exclusive licence of the Diversey name and associated marks for the purposes of carrying on the retained institutional and laundry business and the retained water treatment business, and a Manufacturing/Supply Agreement under which Unilever Canada Limited will supply to the retained Novamax business certain raw materials and by which the Novamax business will in turn supply certain products to the Diversey business to be acquired.

33. The broad terms of these agreements have been defined in Schedule 9.9 of the Purchasing Agreement. However, these agreements have not been as yet drafted by the parties. Under such circumstances, it is not possible to declare them as ancillary to the concentration.

VI CONCLUSION

34. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.

35. 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 No 4064/89.

For the Commission,

Annex

IV/M.704 - UNILEVER/DIVERSEY

EU I&I DETERGENT MARKET SHARES

[Deleted; business secrets]