

*Case No COMP/M.1892 -
SARA LEE /
COURTAULDS*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/05/2000

*Also available in the CELEX database
Document No 300M1892*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.05.2000
SG (2000) D/103554

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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(2) DECISION

To the notifying party

Dear Sirs,

Subject: Case No COMP/M. 1892 – Sara Lee/Courtaulds

Notification of 20/03/2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On the 20/03/2000, the Commission received a notification of a proposed concentration pursuant of Article 4 of Council Regulation (EEC) No. 4064/89¹, whereby Sara Lee Corporation (Sara Lee) USA, proposed to acquire, within the meaning of Article 3(1)(b) of Council Regulation, sole control of Courtaulds Textiles plc (Courtaulds), UK, by way of a public offer bid.
2. At the time of the notification the bid was hostile, however on 24/03/00 the boards of Sara Lee and Courtaulds announced that they had reached agreement on the terms. The offer had been increased and the directors of Courtaulds unanimously recommended shareholders to accept the bid.
3. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No. 4064/89 and, in view of the undertakings submitted by the parties, does not raise serious doubts as to the compatibility with the common market and with the EEA Agreement.

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, p1, corrigendum OJ L 40, 13.2.1998, p.17).

I THE PARTIES

4. Sara Lee is a publicly held company established under the laws of Maryland of United States of America. It is engaged in the production and marketing of consumer packaged goods, including foods and beverages, personal apparel and household/body care products.
5. Courtaulds is a publicly held company established under the laws of England and Wales. It is engaged in the production of personal apparel, household furnishings and fabrics.

II THE OPERATION

6. The transaction was notified on 20.03.2000. Sara Lee made a public offer for all of Courtaulds' issued and to-be-issued share capital, giving Sara Lee sole control of Courtaulds. The offer was initially for 100 pence per share with the entirety of the transaction valued at approximately £103.8 million. This offer was not recommended by Courtaulds' supervisory boards. The offer was subsequently, on 24.03.00, increased to 145 pence per share after which Courtaulds' board of directors unanimously recommended its shareholders to accept the offer.

III CONCENTRATION

7. The operation is a concentration in the sense of Article 3(1)(b) of the Merger Regulation since Sara Lee will acquire sole control of Courtaulds.

IV COMMUNITY DIMENSION

8. The combined aggregate world-wide turnover of the undertakings concerned exceeds EUR 5 000 million (Sara Lee: EUR [...] million, Courtaulds: EUR [...] million) in 1998. The aggregate Community wide turnover of each party exceeds 250 million (Sara Lee: EUR [...] million, Courtaulds: EUR [...] million) in 1998. Furthermore, the parties did not both achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The operation has, therefore, a Community dimension according to Article 1(3) of the Merger Regulation.

V COMPETITIVE ASSESSMENT

9. The parties have identified an overlap of activities in the production and sale of hosiery and intimate apparel goods.

A The relevant product markets

(i) Hosiery products

10. The parties are of the view that women's hosiery may be divided into three general types of garments, consisting of (i) tights, (ii) stockings and hold-ups, (iii) women's ankle/knee-high socks. The three categories are said to correspond to different sets of prices. However, it is noted, by the parties, that the products serve the same general purpose of providing comfort, warmth and attractiveness in covering the leg and/or foot.
11. From the demand perspective the products differ markedly in shape and appearance. Furthermore, outward fashion trends have significant impact on a consumer's choice of which type of hosiery to wear. For example, sales of stockings have suffered and

demand for socks has grown with fashion trends moving toward women wearing trousers and other informal attire. Similarly, demand for tights has grown as fashion trends have moved toward closer fitting outerwear. Accordingly, demand side substitution between these three categories of hosiery is limited.

12. From the supply perspective the production of hosiery can easily be switched between the product categories, as comparable knitting machine types and gauge are used. A fine gauge hosiery machine can only accommodate certain yarn counts but can be changed between what is effectively a long tube for tights and a short tube for knee or ankle-high socks. It is, therefore, feasible to switch readily between tights and knee or ankle-highs as it would require only some modification in the making-up process. Furthermore, all hosiery products are made with the same fabrics and are distributed through similar retail outlets or similar catalogues, where they are positioned in common floor/display areas.
13. For the purpose of this case, however it is not necessary to decide whether the different hosiery segments constitute relevant product markets, because irrespective of the precise market definition to be adopted in this respect, the assessment of the notified concentration would not change.

(ii) Intimate apparel

14. Products falling within the description of intimate apparel span a variety of undergarments, including brassières; panties; shapewear; intimate tops; dress liners and nightgowns. The parties state that there may be two affected markets: (i) brassieres and (ii) panties.
15. From a demand perspective, brassieres and panties are distinct in both function and use, and are often bought as complements. Therefore, there is no demand side substitution.
16. From the supply perspective, production can easily be switched between panties and brassieres since they are generally produced at the same factories using similar production techniques. Moreover, there is substantial overlap in the type of raw material used (weft and warp knit synthetic and natural fibres, laces and embroideries) in the production of both products and they are generally supplied through the same distribution channels and are marketed in common floor/display areas in the retail outlets and in catalogues.
17. In this case, the question of whether the relevant market is either intimate apparel or subset thereof can be left open, as the assessment of the notified concentration would not change.

B. Producer brand and retailer private label

18. Both hosiery and intimate apparel products are sold as branded and unbranded products. Branded products account for a significant proportion of the goods sold in both markets and generally lead the market in terms of innovation. Private label usually ‘piggy-back’ on manufacturer led innovation and is often produced by branded manufacturers using the same techniques.
19. From the demand perspective and according to the parties, branded products and private label products have identical characteristics and intended uses, and are therefore considered substitutes. Indeed, the products are often displayed next to each other

within the retail outlet and the price ranges of private label and branded products are overlapping, and third party comments have supported this view. Moreover, the increased market share of private label in recent years with a corresponding decrease in market share of brands can be seen as evidence that in the main branded and private label products compete with each other.

20. From the supply side perspective, the branded and private label products are made on the same equipment, with the same processes and personnel. Accordingly, machines currently dedicated to branded production can be used immediately and at no start-up costs to produce private label products.
21. The Commission, therefore, concludes that in this case branded and private label products should be considered to belong to the same market.

C. Relevant geographic market

22. The parties consider that the relevant geographic markets are national since brands, consumer preferences and supplier market shares differ between member states. This is in line with previous Commission decisions² considering consumer products. The parties have identified France and United Kingdom (UK) to constitute the affected markets for both hosiery and intimate apparel.
23. The parties' brands are generally promoted on national levels and are distributed through national distribution centres. Most brand names are national. Sara Lee, for example, sells Pretty Polly in the UK and Dim in France. Although it is noted that other brands have more international scope such as Wonderbra, for example, which is marketed both in both France and the UK.
24. The parties, however, also argue that any national market is increasingly susceptible to effective competition from brands established in neighbouring countries. One example of this is Golden Lady, a hosiery brand, which was originally an Italian based brand but has now expanded to Spain, Austria, Belgium, France, UK, Germany and Greece. Moreover, trade barriers and transport costs are thought to be low and largely off set by labour costs in other countries. This not only makes overseas suppliers potential entrants but also encourages suppliers to move labour intensive production processes to locations where labour costs are lower.
25. The Commission notes, however, that entry by overseas branded suppliers is rare and by no means easy. An entrant will, for example, need to spend substantial amounts on advertising, both to increase consumer awareness and break consumer brand loyalty. The only example of large-scale entry provided by the parties was of Golden Lady which entered the French hosiery market in 1990 and spent a significant amount (around FF [15-25] million per year) on advertising and promotion of its brand. At present it is spending more than its rivals on advertising and yet its market share is small ([0-10] %) as compared to the parties leading brands.
26. The Commission concludes that the markets are at present national and considers the relevant geographical markets are France and the UK.

² COMP/M.1802 Unilever France/Amora-Maille 8 March 2000
IV/M.430 – Procter & Gamble/VP Schickedanz (II) 94/893/EC 21 June 1994

D. Assessment

1. HOSIERY

(i) *France Hosiery*

27. The hosiery sector in France represents a total retail value of EUR [150-250] million. The parties are both active in the three different markets: the pantyhose, the stockings/hold-ups and the knee high socks, which are all affected markets.
28. The Commission analysis of the competitive situation is based on the retailers market shares with the sale of private label products being attributed to the retailers and not to the producers. Indeed, in the French market, the parties do not produce a large amount of private label and the retail market shares reflect the shares of companies on the wholesale market. This analysis by the Commission is in line with the analysis employed in a previous Decision, COMP/M.1802 Unilever/Amora Maille.

Hosiery market shares, 1999, France by volume and value

	Volume ³ %	Value %
Sara Lee	[25-35]	[35-45]
Courtaulds	[15-25]	[15-25]
Combined	[45-55]	[60-70]
Le Bourget	[0-10]	[5-15]
Golden Lady	[[0-10]	[< 5]
Private label	[25-35]	[15-25]
Others/ first price brand	[0-10]	[60-70]

29. Sara Lee and Courtaulds are the two main producers of hosiery on the French market. They each produce one of the two most popular hosiery brands (Dim is produced by Sara Lee and Well by Courtauld), in addition Sara Lee also produces the Chesterfield brand. With a combined market share of [45-55] % in volume and [60-70] % in value, the concentration would be nearly nine times bigger in term of sales than the next competitor, Le Bourget, with the brands Le Bourget ([<5]%) and Bomo ([<5]%). Furthermore, the concentration would be nearly [10-20] times bigger than the third largest competitor, Golden Lady.

³ The data have been derived from the Nielsen trade panel.

30. Private label brands account for roughly one third of sales by volume and one fifth by value. Within the private label products no individual brands has been identified with significant competitive strength, individual private label brands are therefore not considered to be a restraining factor on the concentration.
31. The impact of the concentration on the three different hosiery markets identified by the parties are considered below.

Tights market shares, 1999, France by volume and value

	Volume %	Value %
Sara Lee	[25-35]	[35-45]
Courtaulds	[15-25]	[15-25]
Combined	[45-55]	[60-70]
Le Bourget/ Bomo	[0-10]	[5-15]
Golden Lady	[< 5]	[< 5]
Private label	[25-35]	[15-25]
Others	[0-10]	[< 5]

32. The concentration would unite the market shares of the two leading brands in this sector. With a combined market share of [45-55] % in volume and of [55-65] % in value, Sara Lee would become the market leader with a market share more than seven times larger than its next competitor, Le Bourget.

Stockings/Hold-Ups market shares, 1999, France by volume and value

	Volume %	Value %
Sara Lee	[55-65]	[60-70]
Courtaulds	[5-15]	[5-15]
Combined	[65-75]	[70-80]
Le Bourget/ Bomo	[5-15]	[5-15]
Golden Lady	[> 5]	[> 5]
Private label	[15-25]	[10-20]

Others	[< 5]	[< 5]
--------	-------	-------

33. In the Stockings/ Hold-ups market Sara Lee already holds a dominant position with [60-70] % of the market in value terms. This position will be further strengthened by merging with Courtaulds, the combined market share of the Sara Lee would increase to [45-75] % in volume and [65-75] % in value.
34. The next branded competitors would be Le Bourget with a market share (combined Le Bourget and Bomo) of [5-15] % in volume and [5-15] % in value, and the company producing under the brand Golden Lady with only [0-10] % market share in volume and [0-10] % in value. Private label brands have less influence in this market, representing a combined influence of [15-25] % by volume and [10-20] % by value.

The Knee Highs socks market share, 1999, France by volume and value

	Volume %	Value %
Sara Lee	[20-30]	[30-40]
Courtaulds	[20-30]	[20-30]
Combined	[45-55]	[60-70]
Le Bourget/ Bomo	[0-10]	[0-10]
Golden Lady	[0-10]	[0-10]
Private label	[30-40]	[20-30]
Others	[0-10]	[0-10]

35. On the knee high socks market, the combined market share of the parties would be [45-55] % in volume and [60-70] % in value. The main competitors are the private label products with a combined market share of [30-40] % in volume and [20-30] % in value. The other competitors are small with both market shares less than [0-10] % in volume.

Market structure

36. According to the notifying party, barriers to entry into the hosiery market are low. This is shown by: (1) cross-border expansion by existing manufacturers, the most notable example being Golden Lady; and (2) retailers entering and expanding aggressively in the promotion and sale of private label merchandise.

37. The notifying party explains that the total cost of competitive entry is very low because: (1) a producer may establish itself as a viable competitor with less than [0-10] % of available sales; (2) the raw materials for hosiery are readily available; and (3) distribution facilities may be leased and hosiery products are sufficiently light and easy to handle that there are no unique facility or other requirements for their distribution.
38. Nevertheless, the stagnation of the retail hosiery sales in conjunction with the over capacity of production does not make the market attractive to potential entrants as expected profits are low.
39. Moreover, the high cost of marketing and promotion necessary to enter into the French hosiery market makes entry less likely. For example, the amount spent on advertising in the hosiery market in France in 1999 was FF [30-40] million, of which Well accounted for [15-25] % and Dim for [25-35] %. In addition, Sara Lee estimates that, for an effective launch, a new entrant would need to spend of around FF [15-25] million on advertising during the first two to three years.
40. Furthermore, the market tests, carried out by the Commission, indicate that the two brands are considered to be “must-stock brands” by large retailers.
41. Accordingly, the assessment of the Commission demonstrates that the proposed acquisition of Courtaulds by Sara Lee could result in a dominant position in all hosiery markets in France and therefore raises serious doubts as to its compatibility with the common market.

Commitments of the parties

42. In the light of the concerns raised by the Commission at the initial stage of the investigation the notifying party Sara Lee submitted commitments to divest the entire issued and outstanding share capital of Textiles Well S.A. This included both the Well brand and the le Vigan site where all the hosiery products under this brand are produced.
43. The divestment of the Well brand would remove the overlap of the parties in the hosiery sector in France and the Commissions concerns would be removed.
44. Moreover, the inquiry of the Commission shows that the Well brand is a widely known brand and that the divestment of the site of Le Vigan could allow a new entrant to develop immediately its position in France.
45. As a result, the commitments proposed by the parties remove the concerns involved by the operation on the French hosiery market.

(ii) UK Hosiery

46. The UK hosiery market is segmented with more than 14 brands with market shares above [0-10] %. This includes some private label brands which the parties also manufacture in addition to their own branded products. These products are important accounting for [60-70] % of the market, and include significant retailers such as Marks & Spencer and Asda. Given this the analysis will consider first the downstream level (retail level) and then the upstream level (the wholesale level).

47.

The downstream market size is around EUR [600-700] million and accounted for some [250-350] million pairs in 1999. Market shares are set out in the table below, with the sales of private label products attributed to retailers rather than to the ultimate manufacture. The main brand is St Michael ([15-25] %), which is a private label sold through Marks & Spencer retail outlets. The main branded product in the UK is Pretty Polly, a Sara Lee brand with a market share of [0-10] %. The next largest brand is Aristoc, produced by Courtaulds, with a market share [0-10] %.

Hosiery market shares, retail level 1999, UK, by value

	Tights %	Stockings %	Socks %	All Hosiery %
Sara Lee brands	[5-15]	[10-20]	[< 5]	[5-15]
Courtaulds brands	[0-10]	[0-10]	[< 5]	[< 5]
Combined	[5-15]	[20-30]	[< 5]	[5-15]
Private Label:				
St Michael (M&S)	[15-25]	[15-25]	[20-30]	[15-25]
George (Asda)	N/A	N/A	N/A	[0-10]
Private label total	[55-65]	[55-65]	[60-70]	[60-70]

48. The concentration results in a combined market share in the hosiery market of [5-15] % by value and [0-10] % in volume. The largest combined market share in the three segments arises in stockings where the parties have [20-30]% by value and [10-20] % by volume. Marks & Spencer is the market leader in all sectors apart from stockings where its market share is [15-25] % by value and [10-20] % by volume.
49. The Commission has therefore concluded that the operation does not raise serious doubts according to the analysis on the downstream market.
50. On the upstream level (production level) both Courtaulds and Sara Lee are active in the supply of branded and private label hosiery products.
51. During the course of the investigation the parties revised their view of the size of the market. They suggested that owing to a greater presence of imports than initially anticipated the market was larger than previously estimated. The range of estimated market shares is shown in the table below. The Commission has at this stage of the investigation chosen to analyse the issue on a worst-case basis and accordingly the larger market shares will be used.

	Private Label ⁴	Total Hosiery ⁵
	%	%
Sara Lee	[10-20]	[10-20]
Courtaulds	[15-25]	[10-20]
Combined	[25-45]	[25-35]
Charnos	[10-20]	[10-20]
Coats Viyella	[10-20]	[5-15]
Madison	[0-10]	[0-10]
Flude	[< 5]	[0-10]
Golden Lady	[< 5]	[0-10]

52. Sara Lee estimates that it produces [10-20] % of all hosiery sales and [10-20] % of all private label sales and similarly Courtaulds supplies [10-20] % and [20-30] % respectively. The parties are at present the main producers with a combined market share of around [25-35] % of the total hosiery market and [35-45] % of the private label market.
53. The parties overlap in the supply of private label products to [...], [...] and [...]. Sara Lee also supplies companies such as [...], [...], [...], [...] and [...]. Courtaulds main customer is [...] which accounts for [35-45] % of Courtaulds sales of hosiery in the UK. Similarly, the parties estimate that roughly one third of [...]'s sales are provided by Courtaulds.
54. Relationships between the parties and retailers have historically been long-term. Courtaulds, for example, had supplied its main customers for more than [0-20] years, and has supplied [...], which has a policy of limiting the number of suppliers, for more than [20-40] years.
55. Contracts are, however, generally short term (three - six months) or even on an invoice basis alone and large fluctuations in the volume supplied over time have been pointed by the parties. Courtaulds' share of supply of private label products to [...], for example, has dropped steadily from [50-60] % in 1995 to [5-15] % in 1999.

⁴ Market shares are not published for wholesale data and often kept confidential, this represents the best estimates by the parties. The parties supplied data from Taylor Nielsen and HM Customs and Excise, Product Sales and Trade; UK Markets

⁵ Market shares are not published for wholesale data and often kept confidential, this represents the best estimates by the parties.

56. However, regardless of the stability of supply relationships, the parties have identified a large number of alternative suppliers on this market and the market test show that retailers, with one exception, could easily and would quickly change suppliers in case of an increase in price.
57. Indeed, the parties have identified [10-20] other UK based manufacturers with excess capacity. Excess capacity is estimated to be around [30-40] % of UK manufacturing capacity, which can at little notice be brought on stream.
58. Moreover, several retailers are now obtaining supplies from manufacturing plants abroad, either through an UK producer or directly, which is imposing an extra threat on suppliers. It is estimated, by the parties, that imports now account for 30-40% of private label production. The parties argue further, that this gives the retailers substantial bargaining power and enable them to dictate the terms at which they are supplied.
59. On balance, the view of the Commission is that the enhanced position of the parties does not result in a dominant position either on the downstream or the upstream level. There is sufficient downstream competition between brands and private label products to prevent excessive price increases being passed on to consumers. On the upstream level there are plenty of alternative suppliers with excess capacity both in the UK and abroad.
60. The Commission concludes therefore that the operation does not raise serious doubts as to its compatibility with the common market in the market for hosiery in the UK.

2) INTIMATE APPAREL

61. The market is characterised by a large number of small players with market shares of less than [< 5] % both in the France and the UK.

(i) France intimate apparel

62. The intimate apparel market in France is estimated to be worth around EUR [1-2] million, the market shares of the parties are given in the table below. The combined market share in value terms for all intimate products is [10-20] % with an increment of [< 5]%, and [10-20] % in brassieres with an increment of [< 5] %. In volume terms the combined market share of the parties would be [10-20] % in the market for all intimates and [10-20] % in the brassieres market. The market for panties is not an affected market in France since the combined market share is below [10-20] %.

Intimate apparel market shares, retail level 1999, France, by value

	Brassieres %	Total market %
Sara Lee Brands	[10-20]	[10-20]
Triumph	[0-10]	[0-10]
VF Corp	[0-10]	[0-10]
Etam	[0-10]	[0-10]

Chantelle/Pas	[0-10]	[0-10]
Scandale	[< 5]	[< 5]
Daniel/Hechtr	[< 5]	[< 5]
Courtaulds Brands	[< 5]	[< 5]

63. Sara Lee main brands are Dim, Playtex, Antinea, Cacharel and Wonderbra. Courtaulds primary brands are Gossard and Berlei. Courtaulds is also active in the sale of private-label intimate apparel in France but only on a small scale.

64. Although Sara Lee owns the main brands and the concentration will strengthen its position in the French intimate apparel market further, the Commission does not regard the incremental increase to be of a size substantial enough to alter the competitive environment to an significant extent.

65. The concentration does not, therefore, give rise to competition concerns in intimate apparel in France.

(ii) UK intimate apparel

66. The downstream intimate apparel market in the UK is estimated to be worth EUR [1-2] million, the market shares of the parties are given in the table below. The sales of private label products have, as before, been attributed to the retailer rather than to the ultimate manufacturer.

Intimate apparel market shares, retail level 1999, UK, by value.

	Brassieres %	Panties %	Total %
Triumph Brand	[5-15]	[5-15]	[5-15]
Sara Lee Brands	[0-10]	[< 5]	[0-10]
Courtaulds Brands	[0-10]	[< 5]	[0-10]
Combined	[5-15]	[0-10]	[5-15]
Warnaco Brands	[< 5]	[< 5]	[< 5]
Private Label	[50-60]	[60-70]	[50-60]

67. Sara Lee main brands are Playtex, Wonderbra and Lovable which has a combined market share of [0-10] %. Courtaulds main brands are Gossard and Berlei with combined market shares of [0-10] %. At the downstream level the parties combined market shares of their brands is [0-10] % in value and [0-10] % in volume. In the narrower product markets the concentration in brassieres will result in a combined

market share of [5-15] % in value and [0-10] % in volume which will make it the largest branded producer. Triumph will become the second largest competitor branded with a market share of [0-10] % in value and [0-10] % in volume. However, within the private label products some retailers have higher market shares, Marks & Spencer, for example, has [30-40] % in value and [20-30] % in volume.

68. Therefore, the Commission has concluded that the operation does not raise serious doubts according to the analysis on the downstream market.
69. The upstream level production market shares are considered below. The concentration would result in the parties controlling [25-35] % of manufactured production as shown below.

Intimate apparel, UK production shares 1999.

	Total intimates %
Sara Lee Brands	[0-10]
Courtaulds Brands	[0-10]
Private Label Courtaulds	[15-25]
Combined	[25-35]

70. Only Courtaulds is active in the supply of private label in the UK, its main customer is [...] for whom Courtaulds produce roughly [...] of its hosiery sold under the [...] brand.
71. The production of intimate apparel is very labour intensive and capacity can easily be added. There is a general trend of moving production abroad to countries with lower labour costs. The parties, for example, have plants in Italy, Spain, Turkey, Tunisia and Morocco as well as in UK and France. It is estimated that well over [45-55] % of supply are imported at present and that this proportion will increase in the future.
72. Moreover, there are plenty of alternative suppliers. The parties identified [10-20] other suppliers of branded intimate apparel in the UK and a further [10-20] potential suppliers. The concentration would therefore not raise serious doubts according to the analysis on the upstream market.
73. The Commission concludes that the concentration does not raise any serious competition concerns either on the downstream or the upstream level in the UK market for intimate apparel. On the downstream level there are other strong competitors both from other branded products but notably from private label products. On the upstream level there are several other suppliers both within the UK and elsewhere who are able to supply comparable products to retailers.

VI CONCLUSION

74. For the above reasons, and on condition that the undertakings described in the annex to this decision are fully complied with, 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 pursuant to Article 6(2) of Council Regulation (EEC) N0 4064/89.

For the Commission,

Mario MONTI,
Member of the Commission

CASE No COMP/M.1892 - SARA LEE/COURTAULDS

1.1. Commitments to the European Commission Pursuant to Article 6(2) of Council Regulation (EEC) No 4064/89

Pursuant to Article 6(2) of Council Regulation (EEC) No 4064/89 (as amended) (*the Regulation*), Sara Lee Corporation (*Sara Lee*) hereby gives the commitments set out below to the Commission of the European Communities (*the Commission*) with respect to Sara Lee's proposed acquisition of Courtaulds Textiles plc (*Courtaulds* and, together with Sara Lee, *the Seller*). These commitments shall take effect on receipt of the Commission's decision (*the Decision*) declaring Sara Lee's acquisition of Courtaulds compatible with the common market pursuant to Article 6(2) of the Regulation.

- 1 Sara Lee commits, in accordance with the provisions set out below, to divest the entire issued and outstanding share capital of Textiles Well S.A. (hereinafter *the Business* or the *Divestment Package*),
- 2 The Divestment Package will include all relevant worldwide intellectual property rights, know-how and confidential information including the rights to the Well brand name. To the extent permitted by law or contract, and to the extent required by the purchaser, the Divestment Package will also include :
 - (a) all personnel employed directly in the Business and an obligation on the parties to inform the buyer of the possibility of putting at its disposal on a temporary basis, or of transferring indefinitely, current employees from the administrative or commercial management or any other supporting service of the parties whose services prove necessary for the operation and management of the Business divested to the purchaser. If the purchaser so requests, the parties undertake to negotiate in good faith putting the said personnel at the disposal of the purchaser on a temporary basis or transferring them to the purchaser indefinitely. Further, subject to the conditions noted above:
 - the Seller commits not to hire or solicit the personnel transferred with the Business for a period of at least two years from the date of the sale of the assets.
 - unless the purchaser and the Commission agree otherwise, the Seller shall ensure that any of its personnel employed by or for the Business to be divested shall not be offered incentives to leave the Business and shall not be assigned to the Seller's retained business (competing with the Business) for a period of at least two years from the date of completion of the divestiture of the Business.
 - the Seller shall ensure that any of its personnel that are or have been employed by or seconded to the business unit to be divested within the last two years (and a list identifying such personnel shall be submitted) shall not be seconded to or employed by a business unit of the Seller that directly or indirectly competes with the business to be divested for a period of at least one year from the date of completion of the sale.
 - (b) the assignment to the purchaser of all existing contracts, and all contracts entered into between the date of these commitments and the closing of the sale of the Divestment Package, which are related to, or associated with, the Divestment Package; and
 - (c) the manufacturing sites and assets at Le Vigan in France.

3 Following the Commission decision in relation to Sara Lee's acquisition of Courtaulds (*Completion*) and pending the sale of the Divestment Package, Sara Lee commits:

- (a) to preserve the full economic and competitive value of the Business until the date of divestiture, in accordance with good commercial practices, and to manage the Business in the best interest of the Business. In particular, Sara Lee undertakes to not carry out any act upon its own authority which may have a significant impact on the economic value, the management, or the competitiveness of the Business until the date of divestiture. Sara Lee also undertakes to not carry out upon its own authority any act which may be of such a nature as to alter the nature or the scope of activity, or the industrial or commercial strategy, or the investment policy of the Business. Sufficient resources shall be made available for the Business to develop until the divestiture, based on the approved strategic and (annual) business plans of the Business as adopted in the ordinary course of its business.
- (b) to keep the Business separate from its other businesses and to ensure that employees of the Business have no involvement in any other business and vice versa and also to ensure that the employees of the Business do not report to any individual outside of the business other than as may be appropriate under the paragraph immediately following.

Sara Lee undertakes to ensure that no confidential information concerning the Business is disclosed to employees outside of the Business and that no confidential information from other businesses of the parties is disclosed to the Business with the exception of information reasonably necessary for the divestiture of the Business. Such data shall be made available only to personnel involved in the negotiation and evaluation process, and shall be used solely for purposes of negotiation and evaluation.

4 Sara Lee undertakes, subject to the provisions set out below, to effect the sale of the Divestment Package within [...] of Commission decision to an independent third party purchaser approved by the Commission (whose approval shall not be unreasonably withheld).

5 Sara Lee recognises that for a proposed purchaser to meet with the Commission's approval pursuant to paragraph 4 such purchaser shall be a viable existing or prospective competitor unconnected to and independent of Sara Lee and possessing the financial resources and proven expertise enabling it to maintain and develop the Divestment Package as an active competitive force.

6 Sara Lee shall be deemed to have complied with paragraph 4 (and paragraph 16 below) if, within the [...] period, it has entered into a binding letter of intent or a binding contract for the sale of the Divestment Package (subject to due diligence, regulatory consents and any other conditions not within the control of Sara Lee or the purchaser) provided that such sale is completed within [...] period.

7 Sara Lee shall:

- (a) promptly inform the Commission in writing, with a fully documented and reasoned proposal (including the purchaser's proposed business plan), of any prospective purchaser who indicates a serious desire to purchase the Divestment Package and to whom Sara Lee is seriously considering the sale of the Divestment Package, enabling the Commission to verify, after evaluating such business plan and/or conducting such interviews with the proposed purchaser as

may be appropriate, that the criteria in paragraph 5 with respect to the identity of the purchaser are fulfilled;

- (b) when the parties have entered into a binding letter of intent or a binding contract for the sale of the Divestment Package, submit a fully documented and reasoned proposal enabling the Commission to verify that the conditions laid down in these commitments are fulfilled and that there has been no material change in the status of the purchaser not reasonably foreseeable at the time the Commission assessed that purchaser's suitability under paragraph 7(a); and
- (c) in any event, every two months (or otherwise at the Commission's request) report in writing to the Commission on developments in its negotiations with potential purchasers of the Divestment Package;

subject to the Commission agreeing to keep confidential all such information received.

- 8 The Commission shall use reasonable endeavours to communicate its approval or non approval within 14 working days of receipt of a report identifying a prospective purchaser in accordance with paragraph 7(a) and binding agreement in accordance with paragraph 7(b). In each case, failure of the Commission to communicate its approval or non-approval within that 14 working days shall delay the running of [...] period established in paragraphs 4 and 6 until the Commission communicates its approval or non-approval. The Commission has the right to ask the buyer for business plans and/or to interview the buyer at the Commission's premises. In the case of a plurality of offers from prospective purchasers to whom the Commission does not object, Sara Lee shall be free to accept any offer or to select the offer it considers best.
- 9 Sara Lee will, as soon as practicable and in any event no later than two weeks after the Commission has informed Sara Lee of the Decision, appoint an independent and experienced trustee (*the Trustee*), such as an investment bank, a management consulting company or an auditor, subject to approval by the Commission (such approval not to be unreasonably withheld), to act on Sara Lee's behalf in overseeing the on-going management of the Divestment Package in order to report on its continued independence, economic viability, marketability and competitiveness.
- 10 Along with their request for approval of the Trustee, Sara Lee shall submit a proposed draft mandate setting forth in detail the scope of the mandate and the responsibilities to be performed under the mandate. Sara Lee shall amend the draft if the Commission so requests. When the mandate is signed, the parties may make no further modification to the mandate without the approval of the Commission. At the request of the Trustee, the Commission may require the amendment of the mandate if it is shown that the mandate does not permit the Trustee to fully carry out the tasks given to it.
- 11 The Trustee's mandate shall include the following responsibilities:
 - (a) to monitor the satisfactory discharge by the Parties of the obligations entered into in these commitments (in so far as they fall within the scope of the Trustee's mandate);
 - (b) to provide written reports to the Commission on the progress of the discharge of its mandate, identifying any respects in which the Trustee has been unable to discharge its mandate. Such reports shall be provided in English within ten (10) working days from the end of every two (2) months period following the Trustee's appointment or at such other time(s) or time periods as the

Commission may specify, and shall cover the developments of the previous two-months period. The Parties shall receive simultaneously a non-confidential copy of such Trustee reports; and

- (c) at any time, to provide to the Commission, at its request, a written or oral report on matters falling within the Trustee's mandate. Sara Lee shall receive simultaneously a non-confidential copy of such additional written reports and shall be informed promptly of the non-confidential content of any oral reports.

12 Since these commitments require the mandate of the Trustee to include the responsibility to verify that the assets or businesses to be divested are held separate and to oversee the on-going management of these assets or businesses with a view to ensuring the continued viability and marketability of the relevant assets or businesses, the Trustee shall:

- (a) in consultation with Sara Lee, determine the best management structure to ensure the viability and marketability of the Divestment Package;
- (b) monitor that Sara Lee maintains the viability and marketability of the Divestment Package in accordance with this undertaking, and the management and operation of the Business in the normal course of business, in accordance with past practice, until divestiture;
- (c) monitor, where applicable, that no competitively sensitive information concerning the Divestment Package is disclosed to the Parties (except in so far as necessary to allow the Parties to prepare the divestiture); and

- (d) propose all measures which the Trustee considers necessary to ensure that any of the commitments (such as the maintenance of the viability or marketability and the non-disclosure of competitively sensitive information) are observed by the Parties. The Parties agree to use best endeavors to comply with Trustee proposals under the mandate.

- 13 In the event that the Divestment Package has not been divested (or is not subject to a binding letter of intent or contract in accordance with paragraph 6) by the end of a period of [...] from notification of the decision, Sara Lee undertakes to give the Trustee an irrevocable mandate to find a purchaser for the Divestment Package for [...] and, [...], in accordance with paragraph 2, within the remainder of the [...] period specified in paragraph 4 (or any extension thereof granted pursuant to paragraph 16). The Trustee shall:
 - (a) notify the Commission as soon as practically possible concerning the identity of purchasers with whom it has initiated negotiations and advise the Commission why it believes such purchasers are suitable, in view of the criteria specified above;
 - (b) end negotiations with any prospective purchaser, if the Commission determines that the negotiations are being conducted with an unsuitable purchaser.

- 14 The Parties shall provide the Trustee with all such *assistance* and information, including copies of all relevant documents, as the Trustee may reasonably require in carrying out its mandate. The Parties shall make available to the Trustee one or several *offices* on its premises or in the premises of the entities subject to the present commitments. The Parties shall hold regular *meetings* with the Trustee, according to a time-table agreed between them, in order to provide the Trustee, either orally or in document form, with all information necessary for the completion of his task. At the request of the Trustee, the Parties shall provide the Trustee with access to sites which are being divested.

- 15 As soon as the specific remedy with which the Trustee has been entrusted has been implemented, the Trustee shall request the Commission to be *discharged*. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

- 16 The Commission may, upon Sara Lee's request showing good cause, extend [...] period granted to Sara Lee for divestiture by a period to be agreed between Sara Lee and the Commission.

4 May 2000

.....

Duly authorised for and on behalf of
Sara Lee Corporation