

***Case No COMP/M.2773 -
NESTLE / L'OREAL /
INNEOV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/07/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26/07/2002

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

Subject: Case N° COMP/M.2773 – NESTLÉ / L'ORÉAL / INNEOV
Notification of 27/06/02 pursuant to Article 4 of Council Regulation
No 4064/89¹

1. On 27.06.2002 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89, whereby the undertakings L'Oréal and Nestlé acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a newly created company, Inneov.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

I. THE PARTIES

3. L'Oréal is a French company which has three main areas of activity: cosmetic products, dermatological products (through a joint venture with Nestlé) and pharmaceutical products (through Sanofi-Synthélabo joint controlled with TotalFinaElf). L'Oréal is controlled by the Bettencourt family. [...]
4. Nestlé is a Swiss company active in beverages and food products, pet-care products and pharmaceutical products. The shares of this company are widely spread amongst different shareholders.

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

II. CONCENTRATION

5. Under the Joint Venture Agreement signed on 26 June 2002, L'Oréal and Nestlé plan to create a new joint venture company Inneov. Inneov, will produce, market and distribute food supplements for cosmetic purposes. Food supplement for cosmetic purposes are pills which are supposed to affect the inward and the outward layers of the skin (which effects such as pursuing skin density, alleviating the inconveniences caused by skin dryness or "greasy" skin, hair fall-out...).
6. It will be a full function joint venture operating on a lasting basis. The final ownership of Inneov capital is equal between the parent companies and identical voting rights are attached to their shares. Besides, the joint venture will perform on a lasting basis all the functions normally carried out by undertakings operating in the same sector. It will be an entity with sufficient financial resources to conduct the business, it will have its own workforce dedicated to its day-to-day operation. The joint venture will own or licence the industrial property for its business. It will be free to conduct its own R&D policy. It will have its own name and brand as well as its own business independent policy independent from that of its parents. Inneov will give manufacturing to third parties (eventually to L'Oréal and Nestlé but it is said to be very limited in time) and distribution to its parents but not on an exclusive basis. More precisely, these products are foreseen to be distributed exclusively through the pharmacy channel by a subsidiary of L'Oréal. With regard to this last aspect, it has to be underlined that most of Inneov's would-be competitors do not carry out manufacturing and distribution. Finally, the agreement between the parent companies will initially last twenty years and be renewed for a ten-year period.
7. Accordingly, the transaction is a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (L'Oréal: 13 739 m€; Nestlé: 57 228 m€). Each of them have a Community-wide turnover in excess of EUR 250 million (L'Oréal: 6 415 m€; Nestlé: 19 960 m€), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

A- RELEVANT PRODUCT MARKETS

9. The parties submit that the relevant product market is that of food supplements for cosmetic purposes and that it is distinct both from the market for traditional food supplements used for nutrition and from the market for traditional cosmetics. This is so because there would be no demand or supply-side substitutability between food supplements for cosmetic purposes and these other markets.

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

10. According to the parties, food supplements for cosmetic purposes do not belong to the same market as **traditional cosmetics** even if they pursue the same objectives (moisturising the skin, anti-wrinkles...). First of all, they are not considered as a cosmetic product under the EU regulatory framework (European directive 76/768). There are besides other differences which would render them non-substitutable for traditional cosmetics: consumer perception, the manner in which the products operate, the time necessary to feel an effect and the duration of an effect. As far as supply-side substitutability is concerned, the parties claim that different know-how would be required to market food supplements for cosmetic purposes and, traditional cosmetics.
11. The market test has confirmed that the regulatory framework is totally different between food supplements with cosmetic objectives and topic cosmetic product. Moreover, customers perceive these two kinds of products differently primarily because the first ones consist in taking pills whereas the second ones consist in applying a cream on the skin. Furthermore the time to feel an effect (immediate effect for topical cosmetics and generally non immediate for food supplements with cosmetic purposes) and the duration of this effect appears to be different as well. With regards to supply-side substitutability, producers of topic cosmetic products answered that their production facilities are not designed and equipped to manufacture food products. It would need new resources to enter into its new business.
12. According to the parties, food supplements for cosmetic purposes don't belong to the same market as **food supplements for nutritional purposes** since, from a functional perspective, food supplements proper have a nutritional objective and do not principally claim an effect on outward appearance.
13. The market investigation has shown that, with regard to the substitutability between food supplement with cosmetic purposes and those with nutritional purposes, the differences in effects make them relatively not substitutable with one another. The latter are used to complement the person's diet. This is not the case for the other kind of product. The customers would be consequently very different thus implying a very different way to market them.
14. For the purposes of the present decision, it is not necessary to define the precise boundaries of the relevant market, in particular whether or not food supplements for cosmetic purposes should be considered separately from traditional food supplements or from traditional cosmetics, since the operation would not create or strengthen a dominant position however the product markets are defined regardless of them at market definition.

B- RELEVANT GEOGRAPHIC MARKETS

15. The parties consider that the relevant geographic market is national mainly because of the regulatory framework (according to the parties, these products are still regulated under national laws) makes it impossible to use the same packaging and claims in every country.
16. The market investigation launched by the Commission has confirmed that the geographic market can be regarded as national on account of the structure of the distribution, the average levels of price across the EEA and the regulatory framework (a European directive on food supplements will be however adopted soon).

17. For the purpose of this decision it is not necessary to decide whether the markets are national or wider, since regardless of how they are defined, the operation will not lead to the creation or strengthening of a dominant position on any market.

C- ASSESSMENT

18. Regarding **food supplements**, neither of the parties or the joint venture are present on this segment (except in France where Nestlé has a small activity in meal replacements). So the operation will not give rise to any actual overlaps.
19. Regarding **cosmetic products**, L'Oréal is a leading actor in some member states. However Nestle is not present on this market. Moreover, competitors, which belong for some of them to big groups such as Beisdorf or Johnson & Johnson, can and have developed food supplements for cosmetic purposes themselves. For instance, Johnson & Johnson, which owns the brands Roc, Neutrogena or Aveeno Labels, launched two kind of pills with cosmetic purpose.
20. With respect to the **food supplements for cosmetic purposes** market, the operation will not result in any overlap since the parties are not active in these kinds of products (it has also to be borne in mind that the joint venture is not active yet), except in Belgium where L'Oréal (through Sanofi-Synthélabo) is the market leader with a 20% market share. In each European country, the new entity will have to face competitors who are active in several countries, such as Arkopharma (in France and Spain) and those belonging to pharmaceutical groups (Pierre Fabre, Roche, Robert-Pfleger foundation, Pharmacia and Upjohn) or cosmetic group such as described here above.

VI. CONCLUSION

21. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission

Mario MONTI
Member of the Commission