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***Case No COMP/M.5176 - CVC / SCHUITEMA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/06/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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. 5176 – CVC / Schuitema**
**Notification of 22.05.2008 pursuant to Article 4 of Council Regulation No 139/2004**[1]

1. On 22.05.2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking CVC Fund IV ("CVC Fund IV", Cayman Islands), belonging to the CVC Capital Partners Group S.a.r.l. ("CVC", Luxemburg), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Schuitema N.V ("**Schuitema**", The Netherlands), by way of purchase of shares.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

## I. THE PARTIES

3. CVC Fund IV is a fund that forms part of CVC. CVC and its affiliates provide investment advice and manage investments on behalf of investment funds such as CVC Fund IV. Amongst others, CVC controls Leaf International BV (“Leaf”, The Netherlands), a sugar confectionery manufacturer and supplier of Schuitema.

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1 OJ L 24, 29.1.2004 p. 1.

4. Schuitema is a publicly listed company which is active in the procurement, wholesale and retail supermarket business and the provision of supermarket franchising services in the Netherlands. In addition to the direct operation of 117 retail stores, Schuitema procures goods to 326 stores operated by franchisees which individually operate their stores based on the store formula C1000 as developed by Schuitema.[2] Schuitema is currently ultimately controlled by Koninklijke Ahold N.V. ("Ahold", The Netherlands) which holds 73.2% of the shares.

## II. THE OPERATION

5. The proposed transaction consists of the acquisition by CVC Fund IV of Ahold's 73.2% interest in Schuitema. As an inseparable part of this transaction, CVC and Schuitema will sell 58 Schuitema stores to a wholly-owned subsidiary of Ahold, i.e. these stores will effectively remain with the seller Ahold. As a result of this transaction,[…][3]% of the shares in Schuitema will be owned by CVC while Ahold and other undertakings will have non-controlling minority shareholdings[4]. CVC will thus acquire sole control within the meaning of Article 3(1)(b) of the Merger Regulation over Schuitema.

## III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion (EUR[...] for CVC and EUR[...] for Schuitema). Each of the undertakings concerned has a Community-wide turnover in excess of EUR 250 million (EUR[...] for CVC and EUR[...] for Schuitema).[5] While Schuitema achieves its entire turnover in the Netherlands, CVC does not achieve more than two-thirds of its aggregate Community-wide turnover in the Netherlands. The operation has therefore a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

## IV. COMPETITIVE ASSESSMENT

7. Given that CVC does not control or otherwise own stakes in any company that is active on the same relevant markets as Schuitema, there is no horizontal overlap between the parties. A vertical relationship results from the fact that Schuitema procures sugar confectionery products from CVC's portfolio company Leaf.[6]

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[2] Schuitema grants the right to individual entrepreneurs to operate a supermarket according to a particular franchise formula.[...]

[3] […] = confidential and means deleted for reasons of business secrets

[4] Ahold will hold 20% of the shares and three foundations, the *Stichting Zelfstandig Ondernemerschap,* the *Stichting Schuitema Management* and the *Stichting Administratiekantoor Benelux Investeringen* will own[...]%,[...]% and[...]% of the shares in Schuitema respectively.

[5] Turnover figures for CVC relate to 2006 while turnover figures for Schuitema relate to 2007.

[6] A further relationship exists between Schuitema and CVC's portfolio company AVR/Van Gansewinkel which provides waste collection services to Schuitema. This relationship is not further discussed hereinafter since the services provided by AVR/Van Gansewinkel are merely accessory to the activity of Schuitema and not part of a value-creation chain, i.e. there are no onward sales by Schuitema of these services.

## RELEVANT PRODUCT MARKETS

### 1. *Downstream markets: retail of daily consumer goods*

8. Both the stores operated by franchisees on the basis of the Schuitema's store formula C1000 as well as the stores operated by Schuitema itself are active in the retail of daily consumer goods. The notifying party submits that there is a separate product market for the retail of daily consumer goods carried out by retail outlets such as supermarkets, hypermarkets and discount stores (the "modern distribution channel"). This is in line with the Commission's previous decisional practice with regard to retail distribution.[7] The precise market definition can however be left open, as it would not alter the competition assessment.

### 2. *Upstream market(s): sugar confectionery*

9. The notifying party contends that the relevant product market as regards confectionery is at least sugar confectionery (i.e. candies prepared by dissolving sugar in water or milk and processing it to different types of sweets as well as pastilles which have more refreshing characteristics) or sugar confectionery and chocolate confectionery combined and may be even be much more broader, including other daily consumer goods.

10. In previous decisions the Commission has considered that the market for confectionery can be further subdivided into separate markets for (i) sugar confectionery and (ii) chocolate confectionery.[8] However, the Commission left the market definition open. This distinction has been widely confirmed by respondents to the market investigation. Since Leaf is only active in the sugar confectionery segment, this will be the focus of the assessment.

11. During the investigation, the Commission sought to verify whether a further distinction of the sugar confectionery markets according to the various types of candies available in Leaf's portfolio (chewing-gum, liquorice[9], other candies) was appropriate. The answers were mixed. Most of the customers took the view that no further distinction was to be made within the overall category of sugar confectionery whereas competitors indicated that this market should be segmented according to the end-consumer's main purpose (refreshment or enjoyment) or between chewing-gum and other products. In any case, the precise market definition can be left open, as the transaction does not raise serious doubts under any alternative product market definition.

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7 See decision COMP/M. 4590 Rewe/Delvita of 25 April 2007 and COMP/M.3905 Tesco/Carrefour of 22 December 2005.

8 See decision COMP/M.2072 Philip Morris/Nabisco of 16 December 2000 and COMP/M.4293 Nordic Capital Fund VI/ICA Meny of 8 September 2006.

9 Liquorice candy is flavoured with the extract of the roots of the liquorice plant and usually anise oil as well. It commonly consists of chewing ropes or tubes. In the Netherlands, Northern Germany and Nordic countries, salty liquorice contains ammonium chloride as an additional spicy ingredient.

## RELEVANT GEOGRAPHIC MARKETS

### *1. Downstream markets: retail of daily consumer goods*

12. The geographic market for retail of daily consumer goods was in a number of Commission cases delineated by the boundaries of a territory where consumers can reach the outlets easily within 20-30 minutes driving time. This territory may also be larger (regional or national) if different local areas are connected in such a way that they result in overlapping circles.[10]

13. For the purpose of the present case the geographic market definition of retail of daily consumer goods can be left open since it does not change the competitive assessment.

### *2. Upstream market(s): sugar confectionery*

14. The notifying party submits that the geographic market for sugar confectionery products is national in light of, *inter alia,* the national pricing structure of sugar confectionery manufacturers and the use of national distribution channels.

15. This is in line with the Commission's findings in a previous decision[11], although the precise market definition was ultimately left open in a later Commission decision.[12] Respondents to the market investigation also broadly confirmed the national scope of these markets, given that different brands are sold across countries and price differences between the Netherlands and adjacent Member States.

## COMPETITIVE ASSESSMENT

16. As there is no horizontal overlap between the parties' activities, the only markets within the EEA which could be affected by the present transaction are the sugar confectionery market in the Netherlands and the vertically linked Dutch market for retail sales of daily consumer goods.

17. The notifying party submits that for the purpose of the present assessment it is not necessary to examine possible sub-national markets for the retail of daily consumer goods since the supply of confectionery by Leaf is made irrespective of the local geographic location of supermarkets and since contract negotiations with retailers and distribution services are dealt with nationally. The Commission shares this view which is also in line with the Commission's previous findings as regards the national geographic scope of the sugar confectionary market.

18. In the Netherlands in 2007, Schuitema's franchisee stores hold according to the notifying party [10-20]% while its own stores hold [0-10]% of the retail market of daily consumer goods. Schuitema thus accounts for a market share of [10-20]%. The market investigation confirmed that Schuitema is not viewed as a major player in the retail market of daily consumer goods in the Netherlands.

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10 See decision COMP M.4590 Rewe/Delvita, para 18.

11 Decision COMP M.2072 Philip Morris/Nabisco, para. 17.

12 Decision COMP M.4293 Nordic Capital Fund VI/ICA Meny, para. 17 and 18.

19. On the Dutch market for sugar confectionery products, Leaf would have according to the parties a market share of [20-30]%. This share has been confirmed by respondents to the market investigation and therefore the overall Dutch market for sugar confectionery products would not be affected by the transaction. However, one competitor indicated to the Commission that Leaf would hold a share of [35-45] % in the market for chewing-gum in the Netherlands. However, the notifying party provided figures showing that Leaf's share of the Dutch chewing-gum market would be [30-40]% in 2007 and [30-40]% for the first twelve weeks of 2008.[13]

20. Even if one assumed that Leaf has a market share of [35-45] % in a hypothetical chewing-gum market in the Netherlands, it is unlikely that the transaction would lead to input foreclosure for Schuitema's competitors in the Netherlands. First, it does not appear that Leaf would have the ability to foreclose since it faces strong competition in the chewing-gum market in the Netherlands from Cadbury ([30-40]%), Perfetti ([10-20]%) and Wrigley ([0-10]%).[14] These competitors would represent alternative sources of supplies for retailers and the market investigation did not show that Leaf would be an unavoidable trading partner for retailers in the chewing-gum market in the Netherlands.

21. Second, Schuitema accounts only for slightly more than [0-10]% of Leaf's sales of sugar confectionery products in the Netherlands (the figure for chewing-gum is less than [0-10]%). Therefore the Commission takes the view that there are no economic incentives for Leaf to rely exclusively on, or to prioritise supplies to, Schuitema since more than [80-90]% of Leaf's turnover in chewing-gum is achieved with other retailers or wholesalers.[15]

22. Consequently, in particular given the presence of alternative suppliers and the interest of Leaf to maintain business with other sellers in the retail market and wholesalers, the merged entity is unlikely to have the ability and incentive to foreclose its downstream competitors from the access to input (chewing-gum or other sugar confectionery products).

23. As regards customer foreclosure, the Commission received during the investigation some expressions of concerns from sugar confectionery producers to the effect that the merged entity would foreclose access to Schuitema's shelves, thereby reducing their ability to compete.

24. Nevertheless, it appears that the merger has no appreciable effects as regards access to customers for sugar confectionery producers since Schuitema is not an important customer. As noted above, its market share in the Dutch market for the retail market of daily consumer goods is [10-20]%. Even if Schuitema would decide to source the whole of its needs for sugar confectionery products from Leaf, there will remain sufficient alternative customers (including Ahold, Superunie, and discounters Aldi and Lidl) for Leaf's rivals to sell their products.

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13 Response to the Commission's request for information sent to the notifying party on 12.06.2008.

14 Source: notifying party's estimates confirmed by respondents to the market investigation.

15 The Dutch sugar confectionery market consists of two main channels being the food channel (retail) and the impulse channel (petrol stations, tobacco shops, bars, canteens, movie theatres etc). Typically, 50-60% of sales of confectionery products is made through the retail channel and the remaining part through the impulse channel (Form CO, page 44).

25. In the light of the above, the merged entity is unlikely to have the ability and incentive to foreclose sugar confectionery producers' access to a significant customer base

## VI. CONCLUSION

26. 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