EN

***Case No COMP/M.5828 -***
***PROCTER & GAMBLE/***
***SARA LEE Air care***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 17/06/2010

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

**To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.5828 – Procter & Gamble/ Sara Lee Air Care**
**Notification of 10 May 2010 pursuant to Article 4 of Council Regulation No 139/2004**[1]

1. On 10 May 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 and following a referral pursuant to Article 22(3) thereof by which the undertaking Procter & Gamble Company ("P&G", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Sara Lee Air Care (USA) by way of purchase of assets.

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 internal market and the EEA Agreement.

## I. THE PARTIES

3. Procter & Gamble ("P&G") is a US corporation specialized in the manufacturing, development, distribution and marketing of beauty care, health care and well being, baby and family care and household care products. P&G's household care business manufactures and distributes air fresheners under the *Febreze* brand.

[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.

4. Sara Lee's air care business ("Sara Lee Air Care") comprises the manufacturing and marketing of various types of air fresheners under the *Ambi Pur* brand. Other businesses of Sara Lee Corporation are not involved in the proposed transaction.

## II. THE OPERATION AND THE CONCENTRATION

5. On 11 December 2009, P&G made an offer to acquire the worldwide air care business of Sara Lee Corporation for a cash payment of EUR 320 million.

6. Through the operation, P&G acquires sole control over Sara Lee Air Care[2] by way of purchase of all assets. The transaction is therefore a concentration within the meaning of Article 3 of the Merger Regulation.

## III. EU DIMENSION

7. The proposed transaction meets neither the thresholds of Article 1(2) nor of those of Article 1(3) of the Merger Regulation. However, following a referral request made by Germany pursuant to Article 22(1) of the Merger Regulation on 19 February 2010, and later joined by other Member States, the Commission accepted the requests of Belgium, Germany, Portugal, Spain and the United Kingdom and therefore the transaction is deemed to have EU dimension.

## IV. COMPETITIVE ASSESSMENT

8. The Parties are both active in several air care product segments. Air care products deliver ambient fragrances compounds which serve the purpose of masking or removing unpleasant odours. According to the Parties, they have recently evolved to lifestyle products geared at creating a "signature scent" in homes. The field of air care products has not been assessed by the Commission before.

### 1. RELEVANT PRODUCT MARKETS

**<u>Air fresheners in general</u>**

9. On <u>a first level of segmentation</u>, air care products can be differentiated according to their *end use* into the following categories:

   (a) home air fresheners (used to remove unpleasant odours and lend a scent to the inside of homes),

   (b) fabric fresheners (used to eliminate odours emanating from fabrics used mainly around the house, such as sofa coverings, curtains and carpets),

   (c) car fresheners (used to remove unpleasant odours from and lend a scent to the inside of a car), and

   (d) toilet air fresheners (used to remove unpleasant odours in bathrooms, in particular toilets).

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2 Both referred to as the "Parties".

10. Historically, P&G entered the air care area through the sale of air fresheners marketed for use as fabric fresheners with its *Febreze* brand. In 2006/7, P&G introduced air fresheners marketed for more general use around the home in certain EU countries with sprays and electrical devices using its *Febreze* brand. Sara Lee's major air care products are sold under the *Ambi Pur* brand.

11. The Parties submit that all the above products form one air care product market due to similar usage, marketing strategies and a high degree of supply-side substitution. At the same time, however, they consider that if one were to adopt a more cautious approach, the above product categories could be segmented into these four separate relevant product markets.

12. Respondents to the market investigation almost unanimously confirmed that car fresheners and fabric fresheners are not substitutable with home fresheners from a demand-side point of view. Fabric fresheners are used to freshen up curtains, carpets or sofas and are not used to eliminate bad odours in the whole house or to create an ambiance as home fresheners do. Car fresheners are generally marketed for this specific use and come in distinct formats (e.g. paper fresheners infused with fragrance which can be hung inside the car, fresheners which work with the car's ventilation system or low-voltage electrical fresheners to plug in the cigarette lighter socket) and have little or no functionality in a home where larger formats are preferred. Supply-side substitutability does not appear to be immediate in the light of the heterogeneous market presence of the main players in these segments (Sara Lee Air Care and Reckitt Benckiser are not active in fabric fresheners, while P&G has no activity in car fresheners). Regarding toilet fresheners, the market investigation has not been conclusive on whether they belong to home air fresheners markets or constitute a distinct product market.

13. For the purpose of this decision, the markets for fabric fresheners, car fresheners and home fresheners will be assessed separately. The inclusion or not of toilet fresheners within home air fresheners can be left open as the competitive assessment would not be affected.

**<u>Home air fresheners</u>**

14. On a <u>second level</u>, *home air fresheners* – where there is the only overlap between the Parties – can be further segmented according to the following different *delivery formats*:

    (a) continuous energized air fresheners, which emit a continual level of perfume over a period ranging to 70 to 90 days and use a power source. Devices are either powered by connection to an electrical socket, often referred to as "plug in" devices (hereinafter "electrical devices") or are battery operated;

    (b) continuous non-energized products (oils, gels, liquids and candles), whose perfume impact tends to fade over time and does not last as long as in the case of continuous energized air fresheners; and

    (c) instant action products (sprays), whose perfume impact/odour masking action is rather intense but fades in a matter of hours at most.

15. The Parties submit that, although the respective technologies are different, there is no need for the above differentiation amongst the different home air fresheners in particular due to similar usage and similar marketing. In particular, the Parties have submitted UK

household panel data[3] which show, according to them, that there is significant switching by end-consumers between these different formats.

16. Respondents to the market investigation in general did not endorse the Parties' views as regards a potential segmentation within home air fresheners. Sprays are broadly considered as fulfilling different purposes as compared to continuous products given that sprays are used to remove unwanted odours by providing immediate, but temporary, relief whereas continuous products disperse fragrances in a room during a longer period. Furthermore sprays need to be physically activated by the consumer whereas continuous products distribute scents continuously or on a number of occasions without being physically applied by the consumer. Finally, average prices for sprays are roughly half the price of continuous energized air fresheners.[4]

17. The market investigation also suggested that continuous non-energized items (especially candles) are hardly substitutable with continuous energized devices. Aside from their fragrance effect, candles are also selected by consumers because of their aesthetic appeal. By contrast, electrical devices and battery-powered devices have no specific decoration purposes and are only used to deliver scents in a room. Prices for continuous non-energized are on average lower than those of continuous energized air fresheners.[5]

18. In any case, a potential segmentation between continuous energized devices, continuous non-energized products and sprays can be left open as it would not change the competitive assessment.

**Continuous-energized home air fresheners**

19. On a third level, continuous energized air fresheners can be further segmented into those powered by connection to an electrical socket (electrical air freshener) and battery operated (battery-powered air freshener).

20. *Electrical air fresheners* were launched earlier in Belgium and the UK and use a wick which dips into a small glass bottle (or several for multi-chamber electrical devices) of liquid perfume. The electric current causes the heating element to warm up which vaporizes the volatile fragrance components.

21. *Battery-powered air fresheners* mainly use aerosol technology with a timed mechanical or solenoid actuation of the aerosol. They usually have some additional features, such as activation by motion-sensor or "boost buttons" for extra fragrance.

22. The Parties submit that electrical and battery-operated devices belong to the same market. According to the Parties, both products emit fragrance continuously or intermittently according to the available settings on the particular device in question and consumer preferences. They consider that the functionality of both products are identical, which would be further documented, according to them, by UK household panel data showing a

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3 Kantar Worldpanel data and Household panel methodology, Annex 11, Form CO.

4 Average prices for aerosols are between EUR 0.8 and EUR 3.40 depending on the brand and the Member State, while continuous energized air fresheners are priced on average between EUR 3 and EUR 8 – see Annex 4 and 5 Form CO.

5 See Annex 4 and 5 Form CO.

clear trend towards a decrease in sales for electrical devices and a comparative increase in sales for battery operated devices. This according to the Parties indicates that end-consumers readily switch between battery operated and electrical product offerings.

23. The results of the market investigation conducted by the Commission in this case were not entirely conclusive with respect to this potential distinction. In particular several significant market players argued that a segmentation between electrical and battery-powered devices would be warranted, mainly on the following grounds.

24. First, both products are not necessarily used in the same areas of the home. A electrical device (which operates silently in the background) is more likely to be present in a hall or a living-room to create a pleasant atmosphere. A battery product emits some noise and is therefore rather found in rooms where its function of removing bad odours is more needed (a kitchen or a bathroom). This is further reinforced by the fact that electrical devices are generally not suitable for use in bathrooms where they may be exposed to contact with water.

25. Second, an electrical device would emit a fragrance non-stop until the scent container is emptied and this continuous fragrance varies over time due to the evaporation of the compounds. This would not be the case for a battery-operated product, which is mostly available with a motion sensor or a timer and therefore provides an identical scent each time it is activated.

26. Third, as mentioned above, underlying technologies are different (evaporation for electrical devices, aerosols for battery devices) and involve different production processes and machinery. Battery devices are also considered by several competitors as fairly easier to develop and produce than electrical air fresheners, which are more sophisticated and would involve significant developments costs and lead times.

27. On the other hand, the majority of the customers of the air freshener products manufacturers – mainly retailers - that responded in the market investigation agreed with the view of the Parties that electrical and battery-powered devices belong to the same product market. In general these respondents viewed functionalities of both products as broadly similar and considered that the way end-consumers select and experience electrical devices and battery devices are very close.

28. Although technological differences still exist, most end-consumers would not be aware, or not sensitive, to these differences provided that the end-result is comparable. In any event, it seems that technical differences between electrical devices and battery devices are getting blurred: some electrical devices emit fragrance intermittently with a motion sensor, a timer or a booster (technical features traditionally only present in battery powered devices) and some batteries-operated products have a "near-continuous" fragrance delivery.

29. Several respondents indicated that some switching has already occurred between electrical and battery devices and that such a switching behaviour is likely to continue given the low loyalty of air fresheners consumers (a significant majority of these products are purchased when they are on promotion). This is also confirmed by internal documents of the Parties.[6]

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6 See inter alia Document 1 in response to Commission's request for information dated 12/04/2010 "Maintaining NOS growth air care", page 2.

30. Regarding the different rooms where these products are used, the market investigation did not provide any clear-cut elements which would enable the Commission to draw a firm conclusion on this matter. The market investigation showed indeed that because of tighter restrictions for the use of electric sockets in bathrooms in the UK, electrical devices are used less often in these rooms than elsewhere but it did not provide evidence of a clear pattern that battery powered and electrical devices can primarily be found in different rooms.

31. In conclusion, the Commission takes the view that electrical and battery-operated devices have comparable functionalities, although there may be some differences in usage pattern, and that there exists significant competitive interaction between both formats. In any event, it can be left open whether they belong to separate markets, or to a market for continuous-energized products or a wider market of home air fresheners since the competitive assessment would not change irrespective of the exact product market delineation.

## 2. RELEVANT GEOGRAPHIC MARKETS

32. The Parties submit that the above-mentioned product markets are moving towards an EEA-wide scope, but propose to leave it open for the purpose of the present transaction, and have submitted information under a national geographic market definition. In previous consumer goods cases, the Commission usually defined national markets.[7]

33. The market investigation largely confirmed the existence of national markets. A wide majority of customers as well as competitors confirmed that procurement takes place on a national level, that the retail structure differs across Member States and that consumption habits vary across the Member States concerned.

34. Therefore, for the purposes of the present Decision the competitive assessment will be done at a national level.

## 3. COMPETITIVE ASSESSMENT

### 3.1. Introduction

35. The air freshener market is already concentrated with four main branded players. Aside from the Parties, these are SC Johnson (with the brands *Glade, Oust* and *Brise*) and Reckitt Benckiser (*Air Wick*), present in most of all sectors of the air care market. Additionally, different private labels are present in different countries.

36. P&G entered the air freshener market through fabric fresheners due to its traditionally strong position in the fabric care and fragrances markets. It has therefore a very strong position in all the Member States concerned in fabric fresheners. Sara Lee Air Care has traditionally focused its business in the area of home, toilet and car fresheners. In the air freshener markets in Germany, Spain and Portugal, each Party respectively has high market shares in particular in certain segments (P&G in fabric fresheners, Sara Lee Air Care in car fresheners) where the other party is not active.

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[7] See e.g. Case No COMP/M.3149 Procter & Gamble/Wella (30/07/2003); Case M.3732 Procter & Gamble/Gillette (17/07/2005) or Case M.5230 Capman/Litorina/Cederroth (30/07/2008).

37. The Parties' activities give rise to affected markets in the home air freshener segment in Belgium and the United Kingdom only. If one were to distinguish sub-segments within the home air freshener segments, affected markets would arise for sprays in Belgium, Germany and the United Kingdom as well as for continuous energised fresheners in Belgium and the United Kingdom, in particular in a potential market for electrical air fresheners.

### 3.2. Belgium

38. In Belgium, the Parties would have a combined market share of [10-20] % on a potential market for all home air freshener products, behind Reckitt Benckiser ([30-40]%), SC Johnson ([20-30]%) and private label brands ([10-20]%). Market shares would be higher on a potential spray market in Belgium with a combined share of [20-30]% (and an increment of [5-10]%), where SC Johnson is the market leader with [40-50]%, while private label occupies [20-30]% of the segment. On a market for continuous energised air fresheners the merged entity would have a combined market share of [20-30]% with an addition of only [0-5]% by P&G. Reckitt Benckiser is the clear market leader ([50-60]%), while SC Johnson has a strong presence ([10-20]%), whereas private label competitors achieve [0-5]%.

| 2009 | Home air freshener | Sprays | Continuous Energised (including electrical devices and battery) | Electrical devices |
|---|---|---|---|---|
| P&G | [5-10]% | [20-30]% | [0-5]% | [5-10]% |
| Sara Lee | [10-20]% | [5-10]% | [20-30]% | [40-50]% |
| Combined | [10-20]% | [20-30]% | [20-30]% | [50-60]% |
| Reckitt Benckiser | [30-40[% | [0-5]% | [50-60]% | [20-30]% |
| SC Johnson | [20-30]% | [40-50]% | [10-20]% | [10-20]% |
| Private label | [10-20]% | [20-30]% | [0-5]% | [5-10]% |
| Others | [5-10[% | [0-5]% | [0-5]% | [0-5]% |
| Market size (in M€) | [40-50] | [5-10] | [10-20] | [10-20] |

**Table 1: Market shares potential air care markets based on value figures– Belgium – Source Form CO.**

39. For all of the abovementioned potential markets the proposed transaction does not give rise to any competition concerns as the Parties would not significantly increase their position, face with Reckitt Benckiser and SC Johnson strong market leaders as well as retailers' own brands. This has also been confirmed during the market investigation where almost all customers as well as competitors confirmed that sufficient alternatives would be available and therefore voiced no concerns for the overall home air freshener segment, sprays or continuous energised products.

40. Only if one were to sub-segment the continuous energised products further into electrical and battery air fresheners, would the merged entity have a relatively high combined share of [50-60]% on a potential market for electrical air fresheners with an increment of [5-10]%. In spite of this strong position, the Parties have submitted that the concentration would not impede effective competition since brand loyalty is weak, switching between battery-powered and electrical devices is significant, barriers to entry are

low and buyer power of retailers is relatively high. According to the Parties, sales of electrical devices and refills have considerably decreased in recent years in favour of battery operated products which have been introduced more recently and offer some technological advancements and greater convenience.

41. One competitor has raised the concern that the proposed concentration could lead to a unilateral price increase in the electrical air freshener market in Belgium. According to this competitor, the merged entity may phase out P&G's "Febreze" brand in the EEA (except in the UK) and may adopt an exclusionary policy towards its competitors with its air care portfolio (conglomerate effect).

42. The Commission has extensively investigated the electrical air freshener segment in Belgium. Within this market investigation, no other respondent shared the expressed concerns. To the contrary, a wide majority of retailers does not expect a negative impact from the proposed transaction and was of the opinion that sufficient alternatives would be available post-merger.

43. On the basis of the market investigation, the Commission has been able to identify the following elements, which do not indicate any potential impediment of effective competition in Belgium: *First*, the main retailers do not view the Parties as particularly close competitors. In their view, Sara Lee would compete more directly with Reckitt Benckiser than with P&G. *Second*, the Parties' brands are not considered to be must have brands within the air care market, the main retailers have rather stated that Reckitt Benckiser's "Air Wick" would be the only must-have brand in the air freshener range. According to retailers, P&G is mainly strong in fabric where Sara Lee is not active and P&G's "Febreze" brand does not seem to be strong and is weak in promotion. *Third*, market players have confirmed that the segment is generally promotionally-driven and thus brand loyalty is relatively weak.

44. *Fourth*, whereas, in particular, product development, marketing and shelf space expenses appear to reduce the likelihood of entry, *actual* competition post-merger is expected to remain strong: The presence of Reckitt Benckiser (with a market share of [20-30]%) and SC Johnson ([10-20]%) with well known brands as well as private label competitors in the electrical air freshener segment will continue to put competitive pressure on the merged entity.

45. Furthermore, in particular the presence of battery-operated air fresheners significantly constraints prices in the electrical segment. As already mentioned in the section on the relevant product market, electrical and battery-operated devices have comparable functionalities and roughly similar average prices, therefore a potential price increase post-merger in the electrical segment would result in end-consumers moving to battery devices, a segment where the Parties are not active in. Indeed, household panel data provided by the Parties (even though related to the UK), and statements by market players in Belgium show that there is a significant competitive interaction between electrical air fresheners and battery-operated products. Furthermore, scanner data show that the sales of electrical air fresheners (both in volume and in value) during the last two years declined, while sales of battery-operated have increased recently.

46. For these reasons, the merged entity's ability and incentive to raise prices for electrical air freshener in Belgium post-merger appear limited.

47. Furthermore, the Commission considers that the addition of a turnover of approximately EUR […] in Belgium in the portfolio of Procter & Gamble (with total turnover of

approximately EUR […]) is unlikely to change the ability and incentive of the merged entity to foreclose its competitors in air fresheners. In addition, retailers have indicated that if there were a must have brand it would rather be Reckitt Benckiser's Air Wick and not the Parties' Febreze or AmbiPur brand.

48. In this regard, the concentration therefore does not raise serious doubts as to its compatibility with the internal market.

### 3.3. Spain

49. The proposed transaction would not lead to any affected market in any potential air care market in Spain. Sara Lee Air Care has a strong market position in the car freshener market with a market share of [50-60]%, while P&G is currently not active in the car freshener market.

| 2009 | Car Fresheners |
|---|---|
| P&G | [0-5]% |
| Sara Lee Air Care | [50-60]% |
| Combined | [50-60]% |
| Reckitt Benckiser | [0-5]% |
| SC Johnson | [0-5]% |
| Retailer Brands | [30-40]% |
| Others | [10-20]% |

**Table 2: Market shares for car fresheners based on value figures – Spain – Source: Form CO.**

50. The Spanish Competition Authority put forward in their referral request that P&G might be seen as a potential entrant in the car air care market as the Parties themselves claimed that there is a high supply-side substitutability.

51. For a merger with a potential competitor to raise serious competition concerns, it is in principle necessary to show the following:

(i) A significant likelihood that the potential competitor would act currently as a significant competitive constraint or that, absent the merger, it would grow into an effective competitive force in the market at stake in the foreseeable future.

(ii) The absence of other potential competitors, having the potential for maintaining sufficient competitive pressure after the merger.[8]

52. […]

53. In addition, the market investigation has not confirmed any relevant supply-side substitutability between the car air freshener products and other air care products where P&G is already active. P&G […] is not active in the car air freshener market in any other

[8] See paragraph 60 of the Guidelines on the assessment of horizontal mergers, OJ 2004, C 31, 05.02.2004, p. 5.

country. Besides the fact that P&G is in general a large company with many resources, evidence is missing that absent the proposed transaction P&G would be able to grow into an effective competitive force in the car air care market in the foreseeable future.

54. Finally, Reckitt Benckiser and SC Johnson although currently barely present in the segment of car fresheners in Spain can be seen as potential competitive forces, even to a greater degree than P&G, as both have existing car freshener products developed and are already to a small extent active in a number of other Member States. In addition, opposite to P&G which is only active in the fabric freshener segment in Spain (which represents only a minor part of the overall air care sector in Spain), they are already significantly active in basically all other air care markets in Spain (e.g. Reckitt Benckiser is the market leader in home air fresheners with [20-30]% and SC Johnson number three in home air fresheners with [10-20]% market share).

55. The proposed transaction, thus, does not raise competition problems for the air care markets in Spain.

### 3.4. Germany

56. The proposed transaction would not lead to any significant overlaps in any air care segment or market in Germany. There would only be one affected market in Germany in the market for sprays with a combined market share of [10-20]% and an increment of [0-5]%. Also market respondents did not raise any substantial concerns in respect of this market.

| 2009 | Sprays | Fabric Fresheners |
|---|---|---|
| P&G | [10-20]% | [60-70]% |
| Sara Lee Air Care | [0-5]% | [0-5]% |
| Combined | [10-20]% | [60-70]% |
| Reckitt Benckiser | [5-10]% | [0-5]% |
| SC Johnson | [40-50]% | [0-5]% |
| Retailer Brands | [20-30]% | [20-30[% |
| Others | [0-5]% | [5-10]% |

**Table 3: Market shares for sprays and fabric fresheners based on value figures – Germany – Source: Form CO.**

57. In the market for fabric fresheners, where Sara Lee is not present, P&G has already close to [70-80]% market share. According to the referral request of Germany's Bundeskartellamt, Sara Lee can be seen as a potential competitor in this market due to its overall activities in air fresheners and to the fact that the Parties themselves submit that there is supply-side substitutability between the different segments of the air fresheners market. The Bundeskartellamt therefore submits that the transaction could lead to the elimination of a significant potential competitor.

58. As discussed above, the market investigation did not confirm a significant supply-side substitutability between fabric fresheners and other air care products. […] The market respondents also did not expect Sara Lee Air Care to enter this market in the near future. Therefore, Sara Lee Air Care cannot be seen as a significant potential competitor for the market of fabric fresheners.

59. The proposed transaction, therefore, does not raise any competition problems in Germany.

### 3.5. Portugal

60. In Portugal, there is no affected market under any alternative relevant product market definition. However, Sara Lee Air Care holds a significant share of the car fresheners segment. P&G is not present in this market but it is a particularly strong player in the fabric freshener segment. According to the referral request of the Portuguese Competition Authority both Parties might be seen as potential competitors dues to their overall activities in air fresheners as the Parties themselves submit that there is supply-side substitutability between the different segments of the air fresheners market.

| 2009 | Car Fresheners | Fabric Fresheners |
|---|---|---|
| P&G | [0-5]% | [40-50]% |
| Sara Lee Air Care | [40-50]% | [0-5]% |
| Combined | [40-50]% | [40-50]% |
| Reckitt Benckiser | [0-5]% | [0-5]% |
| SC Johnson | [0-5]% | [0-5]% |
| Retailer Brands | [30-40]% | [50-60]% |
| Others | [20-30]% | [5-10]% |

**Table 4: Market shares for sprays and fabric fresheners based on value figures – Portugal – Source: Form CO.**

61. In respect of car air fresheners, similar to the discussion on potential entry in Spain, there is not a significant likelihood that P&G would act currently as a significant competitive constraint or that, absent the merger, P&G would grow into an effective competitive force in the market at stake in the foreseeable future. […] In addition, market respondent did not see P&G as a potential entrant into the Portuguese market.

62. […] Concerning fabric air fresheners, the market investigation did not find any evidence that Sara Lee Air Care may grow into a significant competitor in the near future.

63. The proposed transaction, thus, does not raise competition problems for the air care markets in Portugal.

### 3.6. United Kingdom

64. In the United Kingdom, the Parties would have a combined market share of [20-30]% on a potential market for all home air freshener products, behind Reckitt Benckiser ([30-40]%) and SC Johnson ([20-30]%), while private label brands ([10-20]%) and other local suppliers ([0-5]%) complement the market. Market shares would be lower on a potential spray market in the UK with a combined share of [20-30]% (and an increment of [0-5]%), where SC Johnson is the market leader with [40-50]%; Reckitt Benckiser with [10-20]% and private labels ([10-20]%) are also important players in this segment. On a market for continuous energised air fresheners the merged entity would have a combined market share of [20-30]% with an addition of [5-10]% by P&G. Reckitt Benckiser is the clear market leader ([40-50]%), while SC Johnson has a strong presence ([10-20]%), whereas private label competitors achieve [5-10]%. In the UK, the merged entity's position on a market for

continuous energised (including both electrical and battery operated) air fresheners does not raise competition issues, in particular due to the referred leading position of Reckitt Benckiser as well as the presence of SC Johnson and of private label competitors.

| 2009 | Home air fresheners | Sprays | Continuous Energised | Electrical devices |
|---|---|---|---|---|
| P&G | [5-10]% | [10-20]% | [5-10]% | [5-10]% |
| Sara Lee | [10-20]% | [0-5]% | [20-30]% | [30-40]% |
| Combined | [20-30]% | [20-30]% | [20-30] % | [40-50]% |
| Reckitt Benckiser | [30-40]% | [10-20]% | [40-50]% | [30-40]% |
| SC Johnson | [20-30]% | [40-50]% | [10-20]% | [10-20]% |
| Private label | [10-20]% | [10-20]% | [5-10]% | [5-10]% |
| Others | [0-5]% | [0-5]% | [0-5]% | [0-5]% |
| Market size (in M€) | [400-500] | [90-100] | [200-300] | [100-200] |

**Table 5: Market shares potential air care markets based on value figures– UK – Source Form CO.**

65. For all of the aforementioned potential markets the proposed transaction does not give rise to any competition concerns as the Parties would not significantly increase their position, faced with Reckitt Benckiser and SC Johnson strong market leaders as well as retailers' own brands. This has also been confirmed during the market investigation where a wide majority of customers as well as competitors confirmed that sufficient alternatives would be available and therefore voiced no concerns for the overall home air freshener segment, sprays or continuous energised products.

66. Only if one were to narrow the relevant product market even further to a market for electrical devices, would the merged entity have a relatively high combined share of [40-50]% with an increment of [5-10]%. Very similar to their arguments with regards to electrical devices in Belgium, the Parties have submitted that the concentration would not impede effective competition since brand loyalty is weak, switching between battery-powered and electrical devices is significant, barriers to entry are low and buyer power of retailers is high. According to the Parties, sales of electrical devices have considerably decreased in recent years in favour of battery operated products which have been introduced more recently.

67. Similar to the concern put forward with regard to Belgium, one competitor has raised the concern that the concentration could lead to a unilateral price increase in an electrical air freshener market in UK. According to this competitor, the merged entity may phase out Sara Lee's "Ambi Pur" in the UK and may adopt an exclusionary policy towards its competitors with its air care portfolio (conglomerate effect).

68. In the Commission's market investigation, other competitors have not shared this view. According to the results of the market investigation, the concentration would not significantly impede effective competition in the UK: *First*, while responses by retailers with regard to the closeness of competition have been mixed, they have in general stated that there are no 'must have' brands or that all four brands are equally important. *Second*, market players have confirmed that the segment is generally promotionally-driven. According to one market participant, 60% of electrical products are sold on promotion. Therefore, the brand does not appear to be a decisive factor for end consumers. This is further evidenced by the end consumers' purchasing patterns of starter kits and refills of

electrical devices: According to the scanner data provided by the parties, the proportion of revenues for electrical air fresheners that comes from refills is not much greater than that for starter kits.[9] Furthermore, prices for starter kits strongly fluctuate which is likely to indicate that end-consumers' choice is to a large degree determined by promotions.

69. *Third*, whereas, in particular, product development, marketing and shelf space expenses appear to reduce the likelihood of entry, *actual* competition post-merger is likely to remain strong: The strong position of Reckitt Benckiser (with a market share of [30-40]%) and the presence of SC Johnson ([10-20]%) as well as private label competitors ([5-10]%) in the electrical segment will continue to put competitive pressure on the merged entity. While not all retailers sell private label products, such products, when offered, compete with branded products according to a significant number of retailers.

70. Furthermore, in particular the presence of battery-operated air fresheners significantly constraints prices in the electrical air freshener segment. UK household panel data provided by the Parties, an analysis of Nielsen scanner data conducted by the Commission and statements by market players in the UK show that there is a significant competitive interaction between electrical air fresheners and battery-operated products, which appears to have increased over time. Moreover, average prices are roughly similar. As explained in the market definition section, there are some tighter restrictions for the use of electric sockets in British bathrooms and therefore electrical air fresheners are not usually used in bathrooms. However, battery powered devices may be used in all the rooms where electrical devices may be used. An attempt to increase price post-merger in electrical air freshener in the UK may thus result in consumers increasingly switching to batteries, a segment where the Parties are not active in, whereas its main competitors are active both in electrical devices and batteries.

71. In addition, as in Belgium, in particular the sales of electrical air fresheners are already declining, while sales of battery-operated air fresheners have recently increased.

72. For these reasons, the ability and incentive to raise prices for electrical air fresheners in the UK post-merger appear limited.

73. Furthermore, the Commission considers that the addition of a turnover of approximately EUR […] in the UK in the portfolio of P& G (with total turnover of approximately EUR […]) is unlikely to change the ability and incentive of the merged entity to foreclose its competitors in air fresheners. In addition, P&G submits that negotiations with retailers generally take place at the level of air care products (and therefore do not include all the product portfolio of P&G). Finally, retailers have in general stated that there are no 'must have' brands or that all four brands are equally important.

74. In this regard, the concentration, therefore, does not raise serious doubts as to its compatibility with the internal market.

## V. CONCLUSION

75. 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

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9 In battery powered products, a higher share of total revenues comes from refills.

Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the European Commission,
(signed)
Joaquín ALMUNIA
Vice-President of the European Commission