

***Case No COMP/M.5958 -  
GS/ TPG/ ONTEX***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 30/09/2010

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EUROPEAN COMMISSION

Brussels, 30.09.2010

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5958 – GOLDMAN SACHS/ TPG / ONTEX  
Notification of 26 August 2010 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 26/08/2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Goldman Sachs Group, Inc. ("Goldman Sachs", USA) and TPG Holdings I, L.P. ("TPG", USA) controlled by TPG Group Holdings (SBS) Advisors, Inc. acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Ontex International N.V. ("Ontex", Belgium) by way of purchase of shares.

**I. THE PARTIES**

2. **Goldman Sachs** is a global investment banking, securities and investment management firm providing a wide range of services worldwide to a diversified client base.
3. **TPG** is a holding vehicle for various investment firms. TPG is a member of the TPG Group, a leading global private investment firm that manages a family of funds, which invest in a variety of companies through acquisitions and corporate restructurings.

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<sup>1</sup> 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. **Ontex** is active in the manufacture and sale of hygiene disposables comprising baby care products, feminine hygiene products and adult incontinence products.

## **II. THE OPERATION AND CONCENTRATION**

5. Goldman Sachs and TPG will indirectly acquire, through Whitelabel IV, an acquisition vehicle formed for the purposes of the transaction, 100% of the shares in Topco and Middleco, the companies through which the current owners of Ontex hold their interests in the company.
6. Goldman Sachs and TPG have each agreed to indirectly acquire 50% of the equity in Whitelabel IV, and will, on the basis of the corporate governance rules, indirectly exercise joint control over Ontex.
7. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **IV. EU DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>2</sup> (Goldman Sachs: EUR 32 387 million, the TPG Group: EUR [...] million and Ontex: EUR 1 109 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Goldman Sachs: EUR [...] million<sup>3</sup>, the TPG Group: EUR [...] million and Ontex: EUR 914 million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

## **V. COMPETITIVE ASSESSMENT**

9. Ontex is active in the manufacture and sale of hygiene disposables comprising baby care products, feminine hygiene products and adult incontinence products.
10. Ontex manufactures mainly private label products (i.e. manufactured by a producer and sold to retailers who then resell the product to end users under their own retailer brands).
11. Goldman Sachs and the TPG group of funds do not control any undertaking that is active in the same relevant markets as Ontex. Therefore, the concentration will not lead to any horizontal overlaps.
12. TPG IV, a private equity fund belonging to the TPG group of funds, owns a controlling interest of [...] % in Vita Cayman Limited, Cayman Islands ("Vita"). Vita supplies nonwoven fabrics (nonwovens) used as inputs by manufacturers of hygiene disposables and is therefore active on an upstream market of the markets on which Ontex is active. The concentration will result in a vertical relationship between Ontex and Vita.

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

<sup>3</sup> Financial year ending 28 November 2008.

## 1. Market definition

### Product market definition

#### (i) Baby care products

13. As regards baby care products, Ontex manufactures nappies (or baby diapers)<sup>4</sup>, pants<sup>5</sup> and baby wipes<sup>6</sup>.

#### Nappies

14. The parties submit that, for the purposes of the present transaction, nappies and pants belong to a single relevant product market because manufacturers generally supply complete ranges of nappies and retailers generally require and stock nappies to cover all relevant age groups.
15. The parties further submit that private label nappies and branded nappies belong to one and the same product market.
16. In a previous decision<sup>7</sup>, the Commission divided the markets for the supply of consumer tissue products to retailers into (i) production and supply of branded products and (ii) production and supply of private labels.
17. The parties submit that, although the markets for the supply of nappies and for the supply of consumer tissue products to retailers bear some similarities, they nevertheless differ materially from one another for the following reasons:
- (i) Two of the three main producers in the EEA of branded nappies also manufacture private label nappies;
  - (ii) In addition to their private label products, most private label manufacturers offer so-called "fancy brands" for regions where private label is underdeveloped or for retail customers that are too small to support their own exclusive private label. The investment required to support a brand is considered to be achievable for a private label manufacturer.
  - (iii) Private label manufacturers have considerably narrowed the quality and performance gap that separated their products from branded nappies in the past.
  - (iv) The retail customers of nappies generally procure both branded and private label products.

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<sup>4</sup> Nappies are synthetic garments for babies and toddlers that are generally made of a waterproof exterior and an absorbent inner core to absorb excretions.

<sup>5</sup> Pants are synthetic nappies used for infants being toilet trained. Pants have the absorption and feature of a taped nappy, but are fitted with stretching sides that allow the child to pull the nappy up and down independently.

<sup>6</sup> Baby wipes are synthetic cloths or paper used for cleaning or drying and designed specifically for use on babies.

<sup>7</sup> Commission decision of 5 September 2007 in Case COMP/M.4533 – *SCA/P&G (European Tissue Business)*, paragraph 28.

(v) The procurement processes do not depend on whether branded or private label nappies are sourced, but depend on the retailer.

(vi) Although branded nappies generally retail at approximately 1.2 to 1.3 times the price of private label nappies, changes in prices of branded nappies by way of promotional activity and reductions of prices at wholesale level have an effect on prices of private label nappies.

(vii) A strong private label product provides retailers with significant leverage over the manufacturers of branded products.

18. The market investigation has shown that brand awareness represents a significant market driver for nappies and the costs involved in order to switch from the production of private label products to branded products are significant. However, from a supply-side perspective, only a limited number of producers of nappies supply only branded products or only private label products.
19. In any event, for the purpose of the assessment of the present transaction, the exact definition of the product market for nappies can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition.

#### Baby wipes

20. The parties submit that, for the purposes of the present transaction, baby wipes could constitute a relevant product market. Given that Ontex' market share in this market would be below [5-10]%, and that there is no vertical relationship with any of the notifying parties' activities, it can be left open whether baby wipes constitute a distinct product market.

#### **(ii) Feminine hygiene products**

21. As regards feminine hygiene products, Ontex manufactures sanitary pads (or towels)<sup>8</sup>, tampons<sup>9</sup> and panty liners and shields<sup>10</sup>.
22. In a previous decision<sup>11</sup>, the Commission considered that there are separate markets for panty liners, sanitary pads (towels) and tampons. The parties agree with this distinction.
23. The parties further submit that at the upstream procurement level, private label and branded feminine hygiene products belong to the same relevant product market, on the basis of arguments similar to the ones put forward in relation to nappies.
24. The market investigation has shown that brand awareness represents a significant market driver for feminine hygiene products and the costs involved in order to switch from the production of private label products to branded products are significant. However, from a

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<sup>8</sup> Sanitary pads are disposable absorbent pads made of cotton and other absorbent material, used by women to absorb menstrual flow.

<sup>9</sup> Tampons are absorbent plugs (either with or without applicator) used by women to absorb menstrual flow.

<sup>10</sup> Panty liners and shields are thinner absorbent pads used to protect underwear.

<sup>11</sup> Commission decision of 21 June 1994 in Case COMP IV/ M.430 – *Procter & Gamble/ VP Schickedanz (II)*, paragraph 75.

supply-side perspective, only a limited number of producers of feminine hygiene products supply only branded products or only private products.

25. In any event, for the purpose of the assessment of the present transaction, the exact definition of the product market for feminine hygiene products can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition.

**(iii) Adult incontinence products**

26. Adult incontinence products are disposable devices specifically designed to absorb and retain urine and faeces in order to keep the skin dry and protected.
27. The parties submit that, for the purposes of the present transaction, adult incontinence products belong to a single relevant product market. This is because the major manufacturers supply the full product range and most of the customers require and stock a full range of products.
28. At the supply level, the parties submit that the distinction between private and branded adult incontinence products may be more pronounced than is the case for baby care and feminine hygiene products, notably because of the different purchasing patterns in the two main distribution channels. Institutional customers of adult incontinence products (hospitals, care homes and governmental bodies) purchase mainly branded products. On the other hand, retail customers (supermarkets and pharmacies) purchase both branded and private label products. Apart from Procter & Gamble, all manufacturers of branded adult incontinence products also supply private label incontinence products.
29. Therefore, the parties submit that, for the purposes of the present transaction, the relevant product markets could be segmented according to the distribution channel.
30. The market investigation has shown that brand awareness represents a significant market driver for adult incontinence products and the costs involved in order to switch from the production of private label products to branded products are significant. Moreover, from a supply-side perspective, only a limited number of producers of adult incontinence products supply only branded products or only private products.
31. In any event, for the purpose of the assessment of the present transaction, the exact definition of the product market for adult incontinence products can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition.

**(iv) Nonwoven fabrics**

32. Nonwoven fabrics are broadly defined as sheet or web structures bonded together by entangling fibre or filaments (and by perforating films) mechanically, thermally or chemically.
33. Vita supplies to manufacturers of hygiene disposables only nonwovens for use as acquisition and distribution layers ("ADL"), which are used as an input for the production

of most hygiene disposables<sup>12</sup>. The function of an ADL in hygiene disposables is to collect bodily excretions and to distribute them into the absorbent core of the product.

34. The parties submit that, for the purposes of the present transaction, the relevant product market may be assumed to be the market for nonwovens. From a supply-side perspective, the nonwovens industry is characterised by large global companies, many of which produce and sell nonwovens for a wide variety of applications.
35. The parties submit that it would be inappropriate to define any narrower segment of the hypothetical market for nonwovens for hygiene applications (i.e. nonwovens used as ADL) as a separate product market.
36. The market investigation suggested that on the one hand nonwovens for hygiene applications have specific characteristics that differentiate them from nonwovens for other applications (for example, they are softer, elastic, safe for use directly on human skin and appropriate to acquiring and distributing liquids). On the other hand, some of these characteristics are also relevant for other application. In addition, many of the respondents to the market investigation consider it possible to switch production. However, the costs entailed for a producer of nonwovens for general applications to start producing nonwovens for hygiene applications appear to be significant.
37. In any event, for the purpose of the assessment of the present transaction, the exact definition of the product market for nonwoven fabrics can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition.

#### Geographic market definition

##### **(i) Hygiene disposables**

38. Ontex supplies hygiene disposables to major retailers throughout the EEA (and institutional customers, in case of adult incontinence products) from its production facilities located in several EEA countries. The production facilities do not have an assigned catchment area. The major retail customers for hygiene disposables have pan-European retailing operations, but purchase centrally.
39. The parties submit that the relevant geographic markets for the supply of nappies, feminine hygiene products and adult incontinence products to retailers are EEA-wide in scope.
40. The market definition has widely confirmed that the scope of the geographic markets is at least EEA-wide.
41. In any event, for the purpose of the assessment of the present transaction, the exact geographic scope of the market for hygiene disposables can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition.

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<sup>12</sup> Except for baby wipes and tampons.

**(ii) Nonwoven fabrics**

42. Vita supplies nonwovens to customers throughout the EEA and beyond. Accordingly, manufacturers of hygiene disposables source nonwovens on an EEA-wide, if not a world-wide level. Transportation costs are low and there are no technical standards or other barriers to trading nonwovens across the EEA.
43. The parties submit that the relevant geographic scope of the upstream market for nonwovens as well as the possible market for nonwovens for hygiene applications is at least EEA-wide.
44. The market definition has widely confirmed that the scope of the geographic markets is at least EEA-wide, given the absence of barriers to trade.
45. In any event, for the purpose of the assessment of the present transaction, the exact geographic scope of the market for nonwoven fabrics can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition.

**2. Vertical relationships resulting from the merger**

46. Nonwovens are used as inputs by manufacturers of hygiene disposables. Thus, the present transaction creates a number of vertical relationships between the activities of Vita and those of Ontex.
47. However, the concentration would result in vertically affected markets only if the relevant downstream markets for the supply of hygiene disposables to retailers were limited to private label products (given that Ontex' market share in the overall segments is below 25%):

*Downstream level*

<b>Private label hygiene disposables: supply to retailers in the EEA (2009)</b>				
Competitor	Nappies	Towels (sanitary pads)	Panty liners	Adult incontinence products
<b>Ontex</b>	<b>[50-60]%</b>	<b>[30-40]%</b>	<b>[40-50]%</b>	<b>[40-50]%</b>
SCA	[10-20]%	[10-20]%	[10-20]%	[5-10]%
Hyga	[5-10]%	-	-	-
Fippi	[5-10]%	-	-	-
Intigena	[0-5]%	[10-20]%	[10-20]%	[10-20]%
Hysalma	-	[10-20]%	[10-20]%	-
Pelz	-	[5-10]%	[5-10]%	-
SILC	-	[5-10]%	-	-
Lille Healthcare	-	-	-	[10-20]%
Indas	-	-	-	[5-10]%
Attends	-	-	-	[5-10]%
Other	[10-20]%	[10-20]%	[10-20]%	[5-10]%

Source: Ontex best estimates based on analysis of major customer tenders.



*Upstream level*

48. As regard the supply of nonwovens for all applications, Vita accounted for the following market shares in 2009:

<b>Supply of nonwovens (all applications) in the EEA (2009)</b>	
<b>Vita</b>	<b>[0-5]%</b>
Freudenberg	[10-20]%
DuPont	[5-10]%
Kimberly-Clark	[5-10]%
Ahlstrom	[5-10]%
PGI	[5-10]%
Other	[60-70]%

Source: Vita and EDANA

49. As regard the supply of nonwovens for hygiene applications, Vita accounted for the following market shares in 2009:

<b>Supply of nonwovens for hygiene applications in the EEA (2009)</b>	
<b>Vita</b>	<b>[0-5]%</b>
TWE	[0-5]%
Texsus	[0-5]%
Sandler	[0-5]%
Shalag	[0-5]%
Other	[90-100]%

Source: Vita and EDANA

**(i) Input foreclosure**

50. The parties argue that the concentration will not increase the costs of Ontex' competitors by limiting access to nonwovens used for the production of hygiene disposables.
51. Vita's share of sales of nonwovens in the EEA is minor in the overall nonwovens market and in the narrower market for supply of nonwovens used as ADL in hygiene disposables, and it competes with a number of other suppliers.
52. The parties submit that customers for ADL typically qualify three or more suppliers and purchase products from two or more suppliers at any given time. As a result, no customer is dependant on any particular supplier.
53. Moreover, a strategy whereby Vita would supply all of Ontex' ADL demand would not be worthwhile for Vita, because this would require it to forgo more than half its ADL revenues. The ADL revenues lost due to exclusively supplying Ontex could not realistically be recouped by Ontex downstream, given that Ontex' competitors do not depend on Vita and could switch supply.
54. In addition, since Ontex' major customers are major European retailers, Ontex faces significant countervailing buyer power which would constrain Ontex ability to implement

price increases even if Vita successfully managed to increase the costs of Ontex competitors.

55. The market investigation widely showed that the nonwovens for the production of hygiene disposables are viewed as an essential input in the production of hygiene disposables. However, Vita is not currently a major supplier of nonwovens and, even if it had a post-merger incentive to limit access to its nonwovens for hygiene applications, it would lack the ability to increase the costs of Ontex' competitors. This is because the competitors of Ontex could easily switch to another producer of nonwovens.
56. Therefore, the present transaction does not raise a serious doubt of input foreclosure as regards with regard to its vertical relationship.

## **(ii) Customer foreclosure**

57. The parties argue that the concentration will not lead to any risk of customer foreclosure. Even if Ontex would purchase all of its demand for ADL from Vita, rival manufacturers of nonwovens would not find their ability to sell their products materially limited. There seems to be ample alternative demand for nonwovens for hygiene applications. Therefore, should Ontex purchase ADL exclusively from Vita, Vita's rivals could easily switch to any other manufacturer of hygiene disposables.
58. In addition, the parties submit that at least Goldman Sachs would not have the incentive to cause Ontex to purchase ADL exclusively from Vita unless this happened on competitive terms. Goldman Sachs would not agree to such strategy because the profits thereof would only accrue to Vita.
59. The market investigation widely confirmed that even if Ontex had an incentive to source nonwovens exclusively from Vita, the parties would lack the ability to prevent Vita's competitors from selling their products to other manufacturers of hygiene disposables. This is because Vita's competitors would have sufficient alternative outlets for their nonwovens.
60. Therefore, the present transaction does not raise a serious doubt of customer foreclosure with regard to its vertical relationship.
61. Consequently, it can be concluded that the vertical link between TPG and Ontex does not lead to serious doubts as regards to its compatibility with the internal market.

## **VI. CONCLUSION**

62. 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 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