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***Case No COMP/M.6012 -
CD&R / CVC / UNIVAR***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/11/2010

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EUROPEAN COMMISSION

Brussels, 25.11.2010

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.6012 – CD&R / CVC / UNIVAR
Notification of 19.10.2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 19 October 2010, the European Commission received a notification of a proposed concentration by which Clayton, Dubilier & Rice, LLC, ("CD&R", USA), through one of its funds, and investment funds advised by CVC Capital Partners SICAV-FIS S.A. and its subsidiaries and affiliates ("CVC", USA), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Univar Inc. ("Univar", USA) 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 internal market and the EEA Agreement.

I. THE PARTIES

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.

3. CD&R is private equity investment group originating, structuring and acting as lead equity investor in management buyouts, strategic minority equity investments and other strategic investments.
4. CVC is a private equity investment group, providing investment advice to and/or managing investments on behalf of investment funds into companies active in various industries including chemicals, utilities, manufacturing, retailing and distribution.
5. Univar is active in the distribution of chemical products and services, mainly in Europe and North-America. Currently, Univar is controlled by CVC.

II. CONCENTRATION

6. On 31 August 2010, the Parties entered into a Stock Purchase Agreement ("SPA"). Under the terms of the SPA, CD&R acquires [...] % of the outstanding shares of Univar. Under the additional Stockholders Agreement, a number of actions require the prior consent of both CD&R and CVC, including [...]. Therefore, CD&R and CVC will acquire joint control over Univar.²
7. The proposed transaction thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (CVC: EUR [...] billion, CD&R: EUR [...] billion, Univar: EUR [...] billion). Each of them has an EU-wide turnover in excess of EUR 250 million (CD&R: EUR [...] billion, CVC: EUR [...] billion, Univar: EUR [...] billion), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The operation therefore has an EU dimension.

IV. COMPETITIVE ASSESSMENT

9. The transaction creates new vertical relationships between Univar and two of CD&R's portfolio companies: Diversey, active in the markets for the supply of cleaning and hygiene products; and Culligan, a provider of products and services for water treatment and purification. Both Diversey and Culligan buy chemical products for their business activities from commodities and specialities distributors such as Univar. However, these vertical relationships are not of a nature that will cause competition concerns.

Relevant product markets

10. The Parties identify the following relevant product markets for the proposed transaction:
(1) the market for the manufacture of chemicals; (2) the markets for the distribution of
(i) commodity chemical products ("commodities") and (ii) specialty chemical products

² Univar is in the process of acquiring Basic Chemical Solutions, L.L.C. ("BCS"), a U.S.-based global distributor and trader of commodity chemicals. This transaction is not notifiable under the EU Merger Regulation. For the purposes of the concentration at hand, the assessment will take into account the effect of the acquisition of BCS.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

("specialties"); (3) the markets for the supply of (i) institutional and (ii) industrial cleaning and hygiene products; (4) the market for the provision of products and services for water treatment and purification.

Manufacture of chemical products (upstream markets)

11. CVC has joint control over Evonik, a manufacturer of chemical products. Aside from Evonik, CVC controls Taminco, another chemicals producer.⁴ In previous cases concerning the manufacture of chemicals, the Commission either concluded that each chemical is likely to constitute a separate product market, mainly due to a lack of supply-side and demand-side substitutability⁵, or left open the precise product market definition.⁶
12. However, in the present case there is no need to reach a conclusion with respect to the precise product market definition, since the proposed transaction does not raise any competition concerns under any plausible market definition.

Distribution of chemical products (upstream markets)

13. Univar distributes commodities and specialities, which it buys from chemical manufacturers. Distribution of chemical products involves primarily the purchase and resale of solid and liquid chemicals to industrial and commercial end users. The chemicals can be warehoused in the distributor's facilities or, particularly with regard to larger volumes of chemical products, directly shipped from the manufacturer's facilities through either a distributor, or a trader, or by the manufacturer itself.
14. The Commission previously defined three separate product markets in chemical distribution, excluding direct sales from manufacturers: aside from the chemical bulk business ("trading"), these are (i) the distribution of commodity chemicals ("commodities"), and (ii) the distribution of specialty chemicals ("specialties").⁷
15. In distribution of commodities, chemical distributors buy commodities in large quantities from producers and/or traders and distribute them to customers that require a large range of different chemicals in smaller quantities, thereby also providing additional services like filling, storing, blending and logistics. By contrast, specialties are high-priced, branded products distributed in small quantities to selected customers. Several distributors specialise in specific products for a range of user groups.

⁴ The acquisition of Taminco and joint control over Evonik by CVC was cleared by the Commission under the case numbers COMP/M.4821 and respectively COMP/M.5243. In the recent case COMP/M.5814 – CVC/Univar Europe/Eurochem, the Commission assess the significance of the vertical links between these two companies and Eurochem (also known as 'Quaron') and concluded that the combination of Univar and Eurochem does not provide for an incentive for input foreclosure neither raise any customer foreclosure concern. While Evonik sells to Diversey, Diversey and Culligan are no actual nor potential customers of Taminco. Furthermore, Culligan is no actual nor potential customer of Evonik.

⁵ See Case M.3125 *Huntsman / Matlinpatterson / Vantico*; Case M.4179 *Huntsman / Ciba TE Business*; see also Case M.2314 *BASF / Eurodiol / Pantochim*.

⁶ See Case M.4836 – *CVC / Univar*.

⁷ See Case M.5814 – *CVC/Univar Europe/Eurochem*.

16. However, the product market definition can be left open in the present case, since the proposed transaction does not raise any competition concerns under any plausible market definition.

Supply of institutional and industrial cleaning and hygiene products (downstream markets)

17. Diversey, a company controlled by CD&R, is a worldwide supplier of cleaning and hygiene products and services. Its suppliers include chemical producers and commodities and specialities distributors. In previous decisions, the Commission identified an industrial sector and an institutional sector for the supply of cleaning and hygiene products and systems.⁸
18. The institutional sector comprises cleaning products supplied to institutional customers such as hotels, restaurants, hospitals and schools. The Commission also considered a potential further segmentation by distinguishing between 1) the kitchen hygiene market, 2) the on premises laundry (“OPL”) market and 3) the housekeeping hygiene market, but left the precise market definition open.⁹
19. The industrial sector comprises products addressed to industrial customers such as commercial laundries, food and beverage producers, etc., and can be further segmented into the following markets: (i) Food and beverage hygiene markets, comprising detergents, disinfectants and specialist application equipment supplied to food and beverage producers; (ii) professional laundry detergents market, products for self-contained, professionally run, profit generating businesses involving the washing of very large volumes for a number of establishments.
20. However, the product market definition can be left open in the present case, since the proposed transaction does not raise any competition concerns under any plausible market definition.

Supply of products and services for water treatment and purification (downstream markets)

21. Culligan, a company controlled by CD&R, is an international provider of water treatment and purification products and related services. As inputs, Culligan sources various chemicals from chemical producers and distributors in the EEA.
22. While the Commission has no previous decisional practice relating to water treatment and purification products and services of the type provided by Culligan, the Parties submit market shares on the basis of the narrowest plausible market definition (i.e. each type of product or service provided by Culligan would constitute a separate product market).
23. However, the product market definition can be left open in the present case, since the proposed transaction does not raise any competition concerns under any plausible product market definition.

⁸ See Case M.704 – *Unilever/Diversey*, and Case M.2665 – *Johnson Professional Holdings/DiverseyLever*.

⁹ See Case M.2665 – *Johnson Professional Holdings/DiverseyLever*.

Relevant geographical market

Manufacture of chemical products (upstream markets)

24. In previous cases concerning the manufacture of chemicals, the Commission either concluded that the geographical scope of the market is EEA-wide¹⁰ or left open the precise product market definition.¹¹
25. However, the geographic market definition can be left open in the present case, since the proposed transaction does not raise any competition concerns under any plausible geographic market definition.

Distribution of chemical products (upstream markets)

26. In previous cases, the market for the distribution of commodity chemicals and specialty chemicals were held to be at least national in scope. The presumption of national markets was driven by the sales structure of the distributors (*i.e.* they operate warehouses from which they distribute their products to the customers with the usual distribution radius being around 160-480 km). In previous decisions the Commission found that at least some of the markets (*eg.* United Kingdom and Ireland or Nordic countries) are larger than national as in those markets a group of countries is served from the same warehouse.¹²
27. However, the geographic market definition can be left open in the present case, since the proposed transaction does not raise any competition concerns under any plausible geographic market definition.

Supply of institutional and industrial cleaning and hygiene products (downstream markets)

28. In case COMP/M.704, the Commission left the precise market definition open, and assessed the transaction's impact at national level as well as at EEA level. In the case COMP/M.2665, although the Commission considered that competition in the institutional sector takes place mostly at national level, it assessed the impact of the transaction at a national level as well as at EEA level.
29. However, the geographic market definition can be left open in the present case, since the proposed transaction does not raise any competition concerns under any plausible geographic market definition.

Supply of products and services for water treatment and purification (downstream market)

30. According to the Parties, the scope of the relevant geographical market for such products and services should be at least national, if not EEA-wide.

¹⁰ See Case M.3125 *Huntsman / Matlinpatterson / Vantico*; Case M.4179 *Huntsman / Ciba TE Business*; see also Case M.2314 *BASF / Eurodiol / Pantochim*.

¹¹ See case M.4836 *CVC/Univar*.

¹² See Case M.2244 *Royal Vopak/Ellis&Everard*.

31. However, the geographic market definition can be left open in the present case, since the proposed transaction does not raise any competition concerns under any plausible geographic market definition.

Vertical Relationships

32. Due to the above-described vertical relationships, the concentration leads to a number of vertically affected markets. Based on the Parties' information, these include:

- (i) the distribution of commodities and specialities in the UK where Univar has a share of [20-30]% and [20-30]% respectively and the distribution of commodities in Belgium where Univar will have a share of [30-40]%¹³;
- (ii) the supply of water treatment and purification products and services where Culligan has:
 - [20-30] % in the segment for the supply of bottled water (home/office delivery and point of use systems) in Belgium,
 - [40-50]% in the segment for maintenance contracts for households (mainly for water softeners) in France;
- (iii) the supply of institutional and industrial cleaning and hygiene products where Diversey has market shares as described in the tables below:

¹³ There are different data on and methodologies for calculating market shares on the chemicals distribution markets available. The above figures represent a 'worst case' scenario. The figures include sales from Eurochem, whose businesses – except from the French activities – Univar has recently bought. The BCS transaction will only lead to relevant overlaps with regard to the distribution of commodities. In these markets, the concentration will not lead to a market share increment above [0-5]% in any EU Member State except in respect of Belgium. In Belgium, the incremental percentage would be [5-10]% (the figure provided above – combined market share of [30-40]% – takes into consideration this increment).

**Supply of Cleaning and Hygiene Products to
THE INSTITUTIONAL SECTOR**

Market Shares of Diversey amounting to at least [20-30]%

Estimate for 2009 based on Value

Markets	Kitchen Hygiene	OPL	Housekeeping	Total
Czech Republic		[20-30]%		[20-30]%
Denmark	[40-50]%	[40-50]%		[30-40]%
Finland	[40-50]%	[40-50]%		[30-40]%
Greece		[30-40]%		[20-30]%
Hungary		[30-40]%		[20-30]%
Malta			[20-30]%	[10-20]%
Netherlands	[50-60]%	[30-40]%	[20-30]%	[30-40]%
Portugal		[30-40]%		[20-30]%
Slovenia			[20-30]%	[10-20]%
Sweden	[30-40]%	[40-50]%		[20-30]%
Norway	[30-40]%	[30-40]%	[30-40]%	[30-40]%

**Supply of Cleaning and Hygiene Products to
THE INDUSTRIAL SECTOR**

Market Shares of Diversey amounting to at least [20-30]%

Estimate for 2009 based on Value

Markets	Food & Beverage	Professional Laundry	Total
Bulgaria		[30-40]%	[10-20]%
Cyprus		[40-50]%	[40-50]%

Supply of Cleaning and Hygiene Products to THE INDUSTRIAL SECTOR Market Shares of Diversey amounting to at least [20-30]%% Estimate for 2009 based on Value			
Czech Republic	[30-40]%%	[60-70]%%	[30-40]%%
Estonia		[40-50]%%	[40-50]%%
Finland	[30-40]%%		[20-30]%%
Hungary		[30-40]%%	[20-30]%%
Portugal	[30-40]%%		[20-30]%%
Romania		[30-40]%%	[10-20]%%
Slovakia	[30-40]%%		[30-40]%%
Spain	[30-40]%%		[20-30]%%
Norway		[60-70]%%	[60-70]%%

33. However, these vertical relationships are not of a nature that will cause competition concerns. In particular, the risk of both input foreclosure and customer foreclosure can be excluded.

Input Foreclosure

34. Culligan sourced chemicals from producers and distributors in 2009 (mainly commodity chemicals, in particular salt) for [...] million EUR. Out of these [...] million, Culligan sourced salt for about [...] million directly from producers.

35. There is no likelihood for input foreclosure on the downstream markets for the supply of water treatment and purification by Univar for three main reasons: *First*, the [...] million EUR represent less than [0-5]%% of the cost fraction of Culligan. Chemicals are thus only an insignificant input into water treatment and purification. *Second*, Univar is only [...] behind its bigger competitor [...] and faces competition by other commodities suppliers upstream. *Third*, Univar is only jointly controlled by CD&R which controls Culligan. CVC may block any attempt by Univar in engaging in input foreclosure.

36. Diversey also sources chemicals from producers and distributors. Its fraction of expenses for chemicals in 2009 represented less than [10-20]%% of its overall costs. For the same three reasons, there is thus no risk of input foreclosure by Univar vis-à-vis competitors of Diversey.

Customer Foreclosure

37. Culligan's total commodity chemical purchases from distributors in the EEA in 2009 was less than [...] million Euro, representing about [0-5]% of total EEA sales of commodity chemicals by chemicals distributors.
38. Diversey is not a significant purchaser of the kind of chemicals either. In 2009, Diversey purchased from chemical distributors in the EEA commodity chemicals in an aggregate amount of approximately [...] million EUR and specialty chemicals in an aggregate amount of approximately [...] million EUR. Such purchases accounted for less than [0-5]% of total 2009 sales of commodity chemicals by EEA-based chemical distributors, and approximately [0-5]% of total 2009 sales of specialty chemicals by chemical distributors based in the EEA. There is thus no risk of customer foreclosure on the upstream markets for the distribution of commodity chemicals.

V. CONCLUSION

39. 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