

***Case No COMP/M.6354 -
CVC/ VIRGIN GROUP
HOLDINGS/ VIRGIN
ACTIVE GROUP***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 14/10/2011

***In electronic form on the EUR-Lex website under
document number 32011M6354***



Brussels, 14.10.2011

C(2011) 7441

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE

PUBLIC VERSION

To the notifying parties:

Dear Sir/Madam,

Subject: Case No COMP/M.6354 – CVC/ VIRGIN GROUP HOLDINGS/ VIRGIN ACTIVE GROUP
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

1. On 09.09.2011, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings CVC Capital Partners SICAV-FIS S.A. ("CVC", Luxembourg) and Virgin Group Holdings Limited ("Virgin Group Holdings", British Virgin Islands) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Virgin Active Group Limited ("Virgin Active Group", UK) by way of purchase of shares². (CVC and Virgin Group Holdings are designated hereinafter as the "notifying parties" or "parties to the proposed transaction".)

I. THE PARTIES

2. CVC is a private equity firm advising and managing investment funds holding controlling interests in companies in various industry sectors.

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.

² Publication in the Official Journal of the European Union No C 274, 17.09.2011, p.14.

3. **Virgin Group Holdings** is active in air travel, tourism, mobile communications, financial services, and health & wellness.
4. **Virgin Active Group** is a private limited company operating health and fitness centres.

II. THE OPERATION

5. CVC and Virgin Group Holdings intend to acquire indirect joint control of Virgin Active Group through a special purpose company Activebidco Limited. On 17.08.2011 Activebidco Limited concluded a sale and purchase agreement for the acquisition of all shares of Virgin Active Group. Following completion of the transaction, Virgin Active Group will be indirectly owned by CVC ([...])% and by Virgin Group Holdings ([...])%³.

III. CONCENTRATION

6. The board of Virgin Active Group will have as voting members four directors – two appointed by CVC and two appointed by Virgin Group Holdings. Virgin Active Group board's decisions will require simple majority, and although CVC's appointed director will enjoy a casting vote on a number of matters, Virgin Group Holdings will retain a veto right to certain reserved matters [...]. Therefore, CVC and Virgin Group Holdings will acquire indirect joint control of Virgin Active Group. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. EU DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (CVC: EUR [...] million; Virgin Group Holdings: EUR [...] million; Virgin Active Group: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (CVC: EUR [...] million; Virgin Group Holdings: EUR [...] million; Virgin Active Group: EUR [...] 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.

³ Virgin Active Group's remaining shares will be held by Virgin Active Group's management.

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

8. There are no horizontal overlaps between CVC, Virgin Group Holdings and Virgin Active Group.
9. The following vertical links give rise to affected markets:
 - i. The upstream supply, installation and operation of vending equipment and beverage systems and the provision of vending ingredients, where CVC through Charden International, the parent of the Autobar Group ("Autobar") is active and Virgin Active Group's downstream offering of vending services to its customers. The vertical overlap within the EEA which gives rise to affected markets is limited to local markets in Spain and the UK; and
 - ii. The upstream supply of certain cosmetics products as shampoo, conditioner, nail colour, nail strengthener, hand lotion, body lotion, body wash, shower gel, body oil, emery boards, foot scrub, hand moisturising lotions, hand cleanser, men's facial foam and aftershave products by Colomer controlled by CVC and the downstream sale either as part of a treatment or separately of these products in the health and fitness centres with spas operated by Virgin Active Group. The vertical overlap within the EEA which gives rise to affected markets is limited to local markets in Italy and the UK.

A. Relevant markets

(1) Health and fitness centres

Product market

10. The notifying parties submit that public health and fitness centres impose significant constraints on health and fitness centres operated by private entities. Public centres typically offer facilities (particularly with regard to those facilities that matter most to customers: gym, studio and swimming pool⁵) and charging structures, which are comparable to private clubs. Therefore the notifying parties consider that the relevant product market is the market for all health and fitness centres including publicly and privately owned clubs.
11. In *Bridgepoint Capital / SVL / Holmes Place*⁶ the Commission suggested however that a product market comprising all sports and leisure centres, including publicly and privately owned clubs would be too broad. There would be some important differences with regard to the facilities offered and the charging structure between publicly and privately owned clubs would be different although in some instances a degree of convergence seems to develop.
12. For the purpose of the present case, the precise product market definition can be left open as no competition concerns arise under any alternative market definition considered.

⁵ The parties note that in its recent decision *Virgin Active Holdings Limited/Espora Racquets and Non-Racquets Holdings* of 11 July 2011 the UK Office of Fair Trading considered these three facilities to be "core" in order for clubs to provide strong competitive constraints.

⁶ Commission decision of 1 July 2003 in Case COMP/M.3169 *Bridgepoint Capital / SVL / Holmes Place*, paragraph 14.

Geographic market

13. In *Bridgepoint Capital / SVL / Holmes Place*⁷, the Commission concluded that a 1.5 kilometre radius/isochrone around the respective clubs equalling a journey of 15 minutes by foot appears to result in the identification of the narrowest possible geographic market.
14. In line with the Commission's decisional practice, the notifying parties submit that the narrowest possible market could be identified by applying a 1.5 kilometre isochrone around the relevant health and fitness centre.
15. For the purpose of the present case, the precise geographic market definition can be left open as no competition concerns arise under any alternative market definition.

(2) Vending services

Product market

16. In line with previous Commission decisions the notifying parties submit that the relevant product market comprises vending services i.e. the sale of products and services at an unattended point of sale through a machine operated by coins or other means of payments (including hot beverages, cold drinks, food/snacks, tobacco, transportation tickets, flowers, etc)⁸.
17. The Commission left open the question of whether the vending services market could be sub-segmented according to the type of product sold (i.e. vending of hot beverages, cold drinks and snacks/food, including confectionery), or by distinguishing full vending services (i.e. including the supply and installation of vending machines) and ancillary services (e.g. procurement of ingredients to stock the machines and cleaning services)⁹.
18. For the purpose of the present case, the precise product market definition can be left open as no competition concerns arise under any alternative market definition.

Geographic market

19. Following the Commission's decisional practice, the notifying parties submit that the relevant geographic market for vending services is national in scope.
20. The precise geographic market definition can be left open for the purpose of the present decision as no competition concerns arise under any alternative market definition.

⁷ Commission decision of 1 July 2003 in Case COMP/M.3169 *Bridgepoint Capital / SVL / Holmes Place*.

⁸ Commission decision of 12 October 2010 in Case COMP/M.5973 *CVC/Charden International*, paragraph 11.

⁹ Commission decision of 12 October 2010 in Case COMP/M.5973 *CVC/Charden International*, paragraph 13.

(3) Cosmetics products

Product market

21. In line with a previous Commission decision¹⁰, the notifying parties submit that the relevant product markets for cosmetics products are as follows: (i) hair care products which may be split into shampoos, conditioners and treatments, styling products and colorants and by distribution channels (professional hairdressers or general retailing), (ii) colour cosmetics split into facial make-up, eye make-up, lip products and nail products, (iii) body care products, (iv) hand care products, (v) bath and shower products; and (vi) men's care products split into shaving, toiletries, bath and shower, deodorants, hair care and skin care.

(i) Hair care products

22. In line with previous decisions of the Commission¹¹, the notifying parties submit that hair care products may be split into shampoos, conditioners and treatments, styling products and colorants.

23. Hair care products may be further split by distribution channels – hairdresser or general retailing. The Commission considered in *Proctor & Gamble / Wella*¹² that such a distinction is appropriate for all hair care products on the basis that to a great extent brands, products and package designs are different and prices of products in hair salons are considerably higher.

(ii) Colour cosmetics

24. Following the Commission's decisional practice¹³ the notifying parties submit that colour cosmetics comprise a variety of products designed to condition the face, eyes, lips and nails in order to enhance a person's appearance. The notifying parties further submit that most cosmetics producers provide the full line of colour cosmetics products, and consumers tend to purchase combinations of different colour cosmetics products.

(iii) Body care products

25. The notifying parties submit that there is a broad market for body care products comprising body lotion, body oil, foot scrub, moisturising lotion and cleansers. Alternatively, separate product markets for each of the products body lotion, body oil, foot scrub, moisturising lotion and cleansers could be considered.

¹⁰ Commission decision of 31 May 2006 in Case COMP/M.4193 *L'Oreal / The Body Shop*, paragraphs 8 and 9.

¹¹ Commission decision of 31 May 2006 in Case COMP/M.4193 *L'Oreal / The Body Shop*, Commission decision of 30 July 2003 in Case COMP/M.3149 *Proctor & Gamble / Wella*.

¹² Commission decision of 30 July 2003 in Case COMP/M.3149 *Proctor & Gamble / Wella*.

¹³ Commission decision of 30 July 2003 in Case COMP/M.3149 *Proctor & Gamble / Wella*, paragraph 8.

(iv) Hand care products

26. The notifying parties submit that hand lotion and emery boards might form part of one market for all hand care products. Alternatively, separate product markets for each of the products hand lotion and emery boards could be considered.

(v) Bath and shower products

27. The Commission considered that bath and shower products constitute a distinct product market in the personal care segment¹⁴. Following the Commission's decisional practice¹⁵, the notifying parties submit that whether bathing products and shower products should be considered as separate markets depends on the individual Member State.

(vi) Men's care products

28. Following the Commission's decisional practice¹⁶, the notifying parties submit that men's products may be segmented in separate markets for perfumes and aftershaves, shaving foam, and grooming (hair and body care products specially designed for men).
29. The notifying parties further submit that as the Commission considered in *L'Oreal / YSL Beauté*¹⁷, body, face and hand care are distinct categories within luxury cosmetics. However, "care" products (including all three categories) may not require further segmentation and therefore all skin care products could form one product market on the basis that distributors buy products by brand/manufacturer and not by isolated products, and manufacturers sell products on this basis.

Conclusion on product markets

30. For the purpose of the present case, the precise product market definition for cosmetics products can be left open as no competition concerns arise under any alternative market definition.

Geographic market

31. The notifying parties submit that the relevant geographic markets for cosmetics products are national in scope.
32. In its previous decisions¹⁸ in the context of cosmetics products, the Commission has indeed considered the geographic scope of cosmetics products markets to be national.
33. The precise geographic market definition can be left open for the purpose of the present decision as no competition concerns arise under any alternative market definition.

¹⁴ Commission decision of 6 June 2011 in Case COMP/M.6221 *Colgate Palmolive / Sanex Business*, paragraph 14.

¹⁵ Commission decision of 6 June 2011 in Case COMP/M.6221 *Colgate Palmolive / Sanex Business*.

¹⁶ Commission decision of 18 October 1995 in Case COMP/M.630 *Henkel / Schwarzkopf*, paragraph 12.

¹⁷ Commission decision of 17 June 2008 in Case COMP/M.5068 *L'Oreal / YSL Beauté*, paragraph 11.

¹⁸ Commission decision of 31 May 2006 in Case COMP/M.4193 *L'Oreal / The Body Shop*, Commission decision of 18 October 1995 in Case COMP/M.630 *Henkel / Schwarzkopf*, Commission decision of 30 July 2003 in Case COMP/M.3149 *Proctor & Gamble / Wella*.

B. Competitive assessment

34. The transaction does not involve horizontal overlaps and gives only rise to vertically affected markets if local markets for health and fitness centres were defined.
35. On a local level (1.5 km around the fitness clubs), Virgin Active Group's market shares for health and fitness clubs could reach in some areas in the UK, Italy and Spain up to [90-100]%.
36. For vending services CVC's/Autobar's market share by revenue is [5-10]% in Spain and [5-10]% in the UK. The notifying parties submit that with regard to separate segments for "full" or "ancillary" vending services CVC's/Autobar's market share by revenue would not be materially different to its shares in vending services. CVC's/Autobar's market shares for vending services by type of product sold are as follows: hot beverages [5-10]% in the UK and [5-10]% in Spain; cold drinks [0-5]% in the UK and [10-20]% in Spain; and snack/food [5-10]% in the UK and [10-20]% in Spain.
37. For the cosmetics products concerned the notifying parties submit that Colomer's market shares in the UK and Italy are less than 20% for each product and less than 5% for most of the products. In the UK based on the information submitted by the notifying parties Colomer's market shares are the following: hand lotion – less than [0-5]% (professional manicure); body lotion [0-5]% (professional manicure); shower products [0-5]% (professional manicure); shampoo [0-5]% (professional salons); conditioner [0-5]% (professional salons); nail colour [10-20]% (professional manicure); nail strengthener – less than [0-5]% (professional manicure); emery boards [0-5]% (professional manicure); foot scrub [0-5]% (professional manicure); moisturising lotions [0-5]% (professional manicure); and cleanser [0-5]% (professional manicure). In Italy based on the information submitted by the notifying parties Colomer's market shares are the following: hand lotion – less than [0-5]%; body lotion – less than [0-5]%; shower products – less than [0-5]%; body oil – less than [0-5]%; shampoo [0-5]% (professional salons); conditioner [0-5]% (professional salons); men's facial foam – less than [0-5]%; men's aftershave products – less than [0-5]%; nail colour [10-20]% (professional manicure); nail strengthener [0-5]% (professional manicure); emery boards [0-5]% (professional manicure); foot scrub [0-5]% (professional manicure); moisturising lotions [10-20]% (professional manicure); and cleanser [0-5]% (professional manicure).
38. This gives rise to vertically affected local markets in Spain and the UK between the upstream supply of vending services by CVC through Autobar and Virgin Active Group's downstream offering of these services in its health and fitness centres. There are also vertically affected local markets in Italy and the UK between the upstream supply of certain cosmetics products by CVC and the downstream sale either as part of a treatment or separately of these products in the health and fitness centres with spas operated by Virgin Active Group.
39. On these vertically affected local markets the transaction does not lead to input or customer foreclosure effects for the following reasons.
 - (i) *Input foreclosure*
40. Virgin Active Group's commercial experience reveals that key drivers of consumer demand are gym, studio classes and swimming pool. Vending services and cosmetics products are an insignificant part of the ancillary offering by a health and fitness centre

to its customers. Furthermore, Virgin Active Group's annual expenditure on products supplied by Autobar and Colomer is very low: [0-5]% for 2010 in the UK; [0-5]% for 2010 in Spain; and [0-5]% for 2011 in Italy.

41. Autobar has a market share of below [10-20]% on the relevant upstream markets. Thus, it would be open to any of Virgin Active Group's competitors operating a health and fitness centre to source its vending services from Autobar's competitors in the upstream market. In addition to that, Virgin Active Group itself sources similar to Autobar's products from various other suppliers¹⁹.
42. Colomer's market share on the relevant upstream markets for cosmetics products does not exceed in most cases 5% and never 20%. In addition, Colomer does not sell "must have" products and Virgin Active Group sources products competing with Colomer's products from other suppliers²⁰.

(ii) *Customer foreclosure*

43. Sourcing of vending services and cosmetics products occurs on a national level where Virgin Active Group's market share in each Member State is below 10%. Even if the envisaged scenario is supply of Virgin Active Group with vending services and cosmetics products only by Autobar and Colomer, their competitors will be able to supply the remaining 90% rivals of Virgin Active Group within the respective Member State, in addition to other routes for supply of vending services and cosmetics products.
44. Vending services are used in many industries besides health and fitness centres. Autobar submits that no segment represents more than [10-20]% of its customers. Thus Autobar's competitors will have many routes for distribution of their products even if they are hypothetically foreclosed from distributing to health and fitness centres (where Virgin Active Group has low market shares on a national level).
45. Similarly, there are various routes of distribution of cosmetics products. In addition, Colomer's competitors can distribute their products as well to other providers of beauty treatment like hairdressers, spas and beauty salons.
46. Considering the strong market position of Virgin Active Group on some local markets for health and fitness centres, any vertical integration with regard to the supply of vending services and / or cosmetics products would not substantially modify or disrupt the current market conditions. As mentioned above these services and products are not core to the operations of a health and fitness centre (see paragraph 10).
47. In view of the above the proposed transaction does not raise serious doubts as to the compatibility with the internal market.

¹⁹ Virgin Active Group sources vending services from [...].

²⁰ Virgin Active Group sources its nail care products in the UK from [...]. In Italy, Virgin Active Group sources its nail care products from [...]. With regard to other health and beauty products Virgin Active Group sources its products in the UK from a multitude of suppliers including [...], and in Italy the products are supplied by *inter alia* [...], etc.

VI. CONCLUSION

48. 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 Commission
(signed)
Joaquín ALMUNIA
Vice-President*