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***Case No COMP/M.7655 - BERKSHIRE HATHAWAY/ THE  
DURACELL BUSINESS***

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: 22/07/2015

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## EUROPEAN COMMISSION

Brussels, 22.07.2015  
C(2015) 5171 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

### **To the notifying party:**

Dear Sir/Madam,

**Subject: Case M.7655 - BERKSHIRE HATHAWAY/ THE DURACELL BUSINESS**  
**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**

- (1) On 23 June 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Berkshire Hathaway Inc. ("Berkshire Hathaway", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of [...] (the "Duracell Business") from The Procter & Gamble Company (the "P&G", USA) by way of purchase of shares<sup>3</sup>. Berkshire Hathaway is designated hereinafter as the "Notifying Party" and together with the Duracell Business as the "Parties".

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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.

<sup>2</sup> OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

\* Should read *the worldwide Duracell battery business*.

<sup>3</sup> Publication in the Official Journal of the European Union No C 214, 30.6.2015, p. 13.

## **1. THE PARTIES AND THE OPERATION**

- (2) Berkshire Hathaway is a holding company owning subsidiaries that engage in a number of diverse business activities, including insurance and reinsurance, freight rail transportation, utilities and energy finance, manufacturing, services and retailing.
- (3) P&G is a multinational company active in the manufacturing, distribution and marketing of fabric and household care, beauty care, grooming, healthcare, baby, feminine and family care worldwide. The Duracell Business constitutes one of several businesses within P&G.
- (4) The Duracell Business manufactures and supplies portable batteries, including alkaline and lithium batteries, and to a very limited extent battery chargers. The Duracell Business does not currently include stand-alone distribution assets or capabilities; however distribution capabilities are being put in place and these will be transferred on closing of the proposed transaction.
- (5) Pursuant to a transaction agreement signed on 13 June 2014, P&G will carry out an internal reorganisation whereby it will transfer the Duracell Business to a newly incorporated Delaware corporation, The Duracell Company, which has been established as a wholly-owned subsidiary of P&G.<sup>4</sup> Certain of Berkshire Hathaway's subsidiaries<sup>5</sup> will acquire the entire capital stock of The Duracell Company in exchange for shares that the Berkshire Hathaway Subsidiaries hold in P&G.<sup>6</sup> As such, Berkshire Hathaway will indirectly acquire 100 % of the capital stock and therefore sole control of the Duracell Business.
- (6) The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **2. EU DIMENSION**

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>7</sup> [Berkshire Hathaway: EUR 135 215 million; The Duracell Business: EUR [...]]. Each of them has an EU-wide turnover in excess of EUR 250 million [Berkshire Hathaway: EUR [...]; The Duracell Business: EUR [...]], 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.

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<sup>4</sup> The Duracell Company has, or will have on closing of the Proposed Transaction, subsidiaries incorporated in several Member States, including France, Germany, Italy, Portugal, Spain and the UK.

<sup>5</sup> [...].

<sup>6</sup> The transferred P&G Shares that are currently held by the Berkshire Hathaway Subsidiaries do not confer control of P&G, amounting to only 1.93 % of P&G's shares.

<sup>7</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

### 3. COMPETITIVE ASSESSMENT

- (8) The assessment focuses on two relevant product markets, namely (i) the manufacture and the supply of batteries, and (ii) the distribution of portable batteries.
- (9) The transaction gives rise to a vertical relationship between Duracell Businesses' activities in the upstream market for portable batteries and the downstream activities of one of Berkshire Hathaway's subsidiaries, [...], active in the distribution of electronic components, with only very limited sales of batteries in the EEA.

#### 3.1. Relevant markets

##### 3.1.1. Upstream market: manufacture and supply of portable batteries

- (10) Batteries are devices that produce electrical energy by means of a chemical interaction between a negative electrode (“anode”) and a positive electrode (“cathode”) through a conductive material (“electrolyte”).<sup>8</sup>
- (11) The Commission has considered segmenting the market for batteries into three separate product markets: (a) portable batteries<sup>9</sup>; (b) heavy-duty industrial batteries<sup>10</sup>; and (c) automotive batteries<sup>11</sup>, and possible distinction between primary batteries (i.e. disposable batteries) and secondary batteries (i.e. rechargeable batteries).<sup>12</sup>
- (12) The Commission also found that the market for primary and secondary portable batteries can be distinguished according to the chemistry. More specifically, the primary portable batteries can be further segmented into chemistries such as (a) zinc carbon, (b) alkaline, and (c) lithium. Similarly, secondary portable batteries can be further segmented into chemistries such as (a) nickel-cadmium (NiCd); (b) nickel-metal hydride (NiMH); (c) lithium-ion (Liion); and (d) lithium.<sup>13</sup>
- (13) Lithium batteries can be produced in cylindrical and coin shapes. The Commission has therefore considered further segmenting the lithium cylindrical batteries based on sub-chemistries as follows: (a) Lithium manganese dioxide "LiMnO<sub>2</sub>", (b) Lithium poly-carbon monofluoride "Li(CF)<sub>n</sub>", (c) Lithium thionyl chloride "LiSOCl", and (d) Lithium-Iron Disulfide "LiFeS".<sup>14</sup>
- (14) Coin-shaped batteries are manufactured both in primary (disposable) and secondary (rechargeable) variants. Primary coin-shaped batteries make up the majority of

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<sup>8</sup> COMP/M.5421 – *Panasonic/Sanyo* (29 September 2009).

<sup>9</sup> The term “portable” battery denotes sealed power cells that can be hand-carried and are meant for use in relatively small devices like mobile telephones, laptop computers, power tools, toys, and the like.

<sup>10</sup> Stationary power supplies that are used in businesses, factories and the like.

<sup>11</sup> Batteries which are used in cars, trucks, and other wheeled vehicles.

<sup>12</sup> COMP/M.5421 – *Panasonic/Sanyo* (29 September 2009).

<sup>13</sup> COMP/M.5421 – *Panasonic/Sanyo* (29 September 2009), paragraph 14.

<sup>14</sup> COMP/M.5421 – *Panasonic/Sanyo* (29 September 2009), paragraphs 16-18.

sales of coin-shaped batteries and are usually used in watches, calculators, hearing aids, cameras and utility meters. Coin-shaped batteries exist based on alkaline, silver oxide and zinc air chemistries and when using lithium as their anode, a distinction can be made between LiMnO<sub>2</sub> coin batteries and Li(CF)<sub>n</sub> coin batteries.<sup>15</sup>

- (15) In its previous decisional practice, the Commission has also considered putative industrial/consumer market segmentations rather than segmenting the market on the basis of the physical characteristics of the battery. However, the Commission has left open whether the battery market should be segmented according to sales channel or the physical characteristics of the battery.<sup>16</sup>
- (16) As for the geographic scope, in *Panasonic/Sanyo*, the results of the market investigation indicated that the geographic markets for the manufacture and supply of primary and secondary portable battery markets are at least EEA-wide and possibly worldwide in scope. In particular, the following elements in the market investigation pointed towards a worldwide market: (a) LiMnO<sub>2</sub> and Li(CF)<sub>n</sub> batteries are produced outside the EEA, mainly in Asia (ii) there are no major differences in customers' requirements between the EEA, USA and Asia (iii) producers would have a global pricing strategy and (iv) many customers source globally. However, indications for significant price differences between the EEA and the rest of the world, pointed to an EEA-wide market also. The exact geographic market definition was left ultimately left open.<sup>17</sup>
- (17) For the purpose of this decision, it is not necessary to conclude on the exact product and geographic market definition as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under any alternative product or geographic market definition.

### 3.1.2. *Downstream market: distribution of portable batteries*

- (18) The Commission has not previously examined a separate market for the distribution of portable batteries. It has only considered separate markets for the wholesale distribution of electronic components and the direct sale of electronic components by manufacturers.<sup>18</sup> In *Avnet EMG/MSI Investoren*, the Commission did not consider necessary to further segment the market for the wholesale distribution of electronic components by product category, notably by reference to semiconductors, passive components, electromechanical components (which includes batteries), and embedded products.<sup>19</sup>

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<sup>15</sup> COMP/M.5421 – *Panasonic/Sanyo* (29 September 2009), paragraphs 49-51.

<sup>16</sup> COMP/M.5421 – *Panasonic/Sanyo* (29 September 2009), paragraph 35.

<sup>17</sup> COMP/M.5421 – *Panasonic/Sanyo* (29 September 2009), paragraph 38.

<sup>18</sup> COMP/M.5099 - *Arrow Electronics/Logix* (19 May 2008); COMP M.5385 - *Avnet/Abacus* (19 January 2009); COMP/M.6863 – *Avnet EMG/ MSI Investoren* (4 September 2013).

<sup>19</sup> COMP/M.6863 – *Avnet EMG/MSI Investoren* (4 September 2013), paragraphs 29; COMP M.5385 - *Avnet/Abacus* (19 January 2009), paragraphs 13-16.

- (19) The Commission has previously considered that the relevant geographic market for the wholesale distribution of electronic components is national, although it was observed that there was a trend towards the widening of the geographic market.<sup>20</sup>
- (20) The Notifying Party is of the view that the relevant geographic market should be considered to be EEA-wide as (i) most suppliers are active across a range of countries; (ii) transport costs make up only a small part of the total price of the products; and (iii) there is little variation in terms of products, pricing and transport costs between Member States.<sup>21</sup>
- (21) For the purpose of this decision, it is not necessary to conclude on the exact product and geographic market definition as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under any alternative product or geographic market definition.

### **3.2. Vertical effects**

- (22) The Notifying Party is of the view that narrowing the market to the distribution of portable batteries is not necessary as portable batteries can be (and are) distributed by companies that also distribute other products. Furthermore, the Commission has not previously analysed a narrow market for the distribution of portable batteries. In any event, for the sake of completeness, the Notifying Party submitted information even on this narrow approach.
- (23) The Notifying Party submitted market share information, according to which the EEA market share of the Duracell Business for portable alkaline batteries would be of [30-40]% in value and [10-20]% in volume (and between [0-5]% and [10-20]% by volume and between [0-5] and [20-30]% by value in respect of other types of batteries).
- (24) On the other hand, the Notifying Party submits that in 2014 [a subsidiary of Berkshire Hathaway] sold approximately [...] of portable batteries in the EEA and that portable batteries represent [0-5]% of [that subsidiary's] total sales of electronic components.
- (25) Moreover, the Notifying Party submitted market share data showing that in the area of primary portable alkaline batteries, the Duracell Business has a strong competitor with a value based market share of [10-20]% and a volume based share of [10-20]%, namely Energizer. While the remainder of the market for branded products appears to be fragmented, a [30-40]% value based market share and [50-60]% volume based market share is attributed to private label producers. It is apparent that the vertical link in question is highly unlikely to lead to any foreclosure effects in the EEA market given that Berkshire Hathaway's subsidiary distributes only very small amounts of batteries in the EEA ([...] in 2014), while The Duracell Business and its main competitors supply very significant amounts of portable primary alkaline batteries on the EEA market. It is apparent that Berkshire Hathaway lacks the ability and incentive to engage in any foreclosure strategy.

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<sup>20</sup> COMP M.5385 - *Avnet/Abacus* (19 January 2009), paragraph 27; COMP/M.6863 – *Avnet EMG/ MSC Investoren* (4 September 2013), paragraph 39; COMP/M.3820 - *Avnet / Memec* ( 24 June 2005), paragraph 25.

<sup>21</sup> COMP/M.6863 – *Avnet EMG/ MSC Investoren* (4 September 2013), paragraph 40.

- (26) Even when considering a further sub-segmentation of the market on the basis of sub-chemistries and form of the batteries (lithium coin, lithium cylindrical, manganese dioxide coin, zinc air coin, NiMH) no further affected market would arise.
- (27) Against this background, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for portable batteries.

#### **4. CONCLUSION**

- (28) 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 and Article 57 of the EEA Agreement.

*For the Commission  
(Signed)  
Margrethe VESTAGER  
Member of the Commission*