

*Case No IV/M.836 -
Gillette / Duracell*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 08/11/1996

*Also available in the CELEX database
Document No 396M0836*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.11.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Registered with advice of delivery

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.836 - GILLETTE / DURACELL

Notification of 04.10.1996 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On 04.10.1996, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking The Gillette Company (Gillette) will acquire sole control of the whole of Duracell International Inc. (Duracell). According to the Agreement and Plan of Merger, a vehicle company wholly-owned by Gillette ("Alaska") will be merged with and into Duracell, and cease immediately to exist. All shares in Duracell will then be cancelled and converted into rights to receive new shares in Gillette. As a result of the proposed operation, Duracell's largest current shareholder (Kohlberg, Kravis, Roberts & Co.) will hold 7% of Gillette.
2. On 25.10.1996, the Commission decided provisionally, pursuant to Articles 7(2) and 18(2) of Council Regulation (EEC) No 4064/89, to continue the suspension of the whole of the proposed concentration, until the adoption of a final decision. After complete examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. Gillette is a US internationally focused consumer products group, currently active worldwide in the following main sectors: a) personal grooming products (razors and razor blades, toiletries and cosmetics, oral care products); b) stationery products (writing instruments like pens, pencils, crayons, markers and highlighters); c) small electrical and electronic appliances (including electric shavers and beard-trimmers, hair care products, food processors, electric toothbrushes, irons and clocks). The company is listed on the New York Stock Exchange and its largest shareholder is Berkshire Hathaway Inc. (controlled by Mr. Warren Buffett) which holds a 11% common stock interest.
4. Duracell is a US company competing worldwide in the manufacture and marketing of consumer batteries of any type and size. The company is listed on the New York Stock Exchange and its largest shareholder is Kohlberg, Kravis, Roberts & Co., a merchant banking firm which holds 34%.

II. COMMUNITY DIMENSION

5. Gillette and Duracell have a combined aggregate worldwide turnover in excess of ECU 5,000 million (Gillette, ECU 5,194.7 million; and Duracell, ECU 1,775.3 million). Each of them has a Community-wide turnover in excess of ECU 250 million (Gillette, ECU 1,807.3 million; and Duracell, ECU 463.4 million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product market

6. The notifying party states that there is a relevant product market for the supply of consumer batteries, comprising a number of different types and sizes of batteries (such as zinc carbon and alkaline general purpose batteries, lithium round and button cells, nickel metal hydride and nickel cadmium rechargeable batteries) all used to power different types of consumer appliances. However, it is not necessary to further delineate the relevant product markets because, even in the narrowest product market definition the proposed operation would not significantly impede effective competition in the EEA or any substantial part of that area.

B. Relevant geographic market

7. The notifying party states that the relevant geographic market for consumer batteries is (at least) European-wide. However, it is not necessary further to delineate the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

C. Assessment

8. Since Gillette and Duracell are currently operating in unrelated fields, the proposed concentration will not result in any horizontal nor vertical overlap between their business activities. Therefore, however the relevant market is defined in terms of both product and geographic dimensions, there are no affected markets within the meaning of Form CO.
9. Duracell is the largest supplier of batteries in the EEA, with a market share of between 30% and 40%, whereas its three main competitors (Ralston Purina, Varta and Philips) account for an aggregate share of between 40% and 50%. Gillette is by far the major supplier of razors and razor blades in Europe, with market shares exceeding 50% and 70% respectively. Warner Lambert and Bic are its main competitors. Within the EEA, both Gillette and Duracell products are mostly sold direct to major retail chains (such as Promodes, Intermarché, Kingfisher, Metro, Carrefour, Rewe, Boots and Leclerc), whereas smaller retail outlets in different areas are serviced mainly through wholesalers.
10. In view of the strong market positions already held by both Gillette and Duracell in their respective businesses, and also taking into account the fact that to a large extent their products are sold to the same customers, the Commission has deemed it necessary to analyze the likely competitive impact of the proposed concentration. In this respect, the issue for consideration has been whether the combination of these two leading manufacturers of branded fast moving consumer goods might unfairly reduce third parties' legitimate opportunities of access to markets and supplies. In particular, the Commission's main concern was related to the possibility that the stronger joint negotiating power of Gillette and Duracell might allow them to obtain from customers a privileged allocation of selling spaces (especially at strategic locations such as at supermarket check-out counters) to the detriment of their competitors' products, thereby significantly restricting consumers' freedom of choice in the long run.
11. With reference to the above mentioned issues, the parties' main competitors, as well as a large number of customers throughout the individual European countries, have been requested to provide information on the likely consequences of the proposed operation. Some competitors have expressed concerns about the likely negative effect on their business resulting from the strengthening of Gillette and Duracell's bargaining power vis-à-vis distributors and retailers. However, most customers have pointed out that they do not expect any significant modification of either their current purchasing conditions or retailing strategies following the proposed acquisition.
12. In the light of this information, the Commission considers that most customers remain able to face the strengthened bargaining power of the merged undertaking. Moreover, the link between products of a different nature currently supplied by Gillette and Duracell appears extremely tenuous. Thus, there is insufficient evidence to conclude that the notifying party would be capable of exercising influence on distribution, to an extent which would have a significant adverse impact on competition. Therefore, the Commission has concluded that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

IV. CONCLUSION

13. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,