



EUROPEAN COMMISSION

DG Competition

***Case M.8531 - CVC / LA
GARDENIA / LIMONI***

Only the English text is available and authentic.

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

Article 4(4)

Date: 20 July 2017



EUROPEAN COMMISSION

Brussels, 20.7.2017
C(2017) 5283 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

To the Italian Competition Authority

**Subject: Case M.8531 – CVC / La Gardenia / Limoni
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to Italy and Article 57 of the Agreement on the European Economic Area².**

Date of filing: 15 June 2017

Legal deadline for response of Member States: 06 July 2017

Legal deadline for the Commission decision under Article 4(4): 20 July 2017

Dear Sir or Madam,

1. INTRODUCTION

- (1) On **15 June 2017**, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authority of Italy.

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 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

- (2) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
- (3) A copy of this Reasoned Submission was transmitted to all Member States on **15 June 2017**.
- (4) The Italian Competition Authority, as the competent authority of Italy, did not express disagreement with the proposed referral.

2. THE PARTIES

- (5) CVC Capital Partners SICAV-FIS S.A ("**CVC**", the "**notifying party**") is a private equity company engaged in the provision of advice to and management of investment funds holding interests in companies primarily in Europe, the United States and the Asia-Pacific region. It indirectly and solely controls the Douglas Group³, including its wholly owned subsidiary, Profumerie Douglas S.p.A ("**Profumerie Douglas**"). Profumerie Douglas is a retailer of cosmetics and perfumes and related products and services.
- (6) La Gardenia Beauty S.p.A. and Limoni S.p.A (the "**Target**"), both affiliates ultimately controlled by Orlando Italy Special Situations SICAR S.C.A. ("**Orlando Italy**"), are active in the retail distribution of perfumes and cosmetics and they are trading together under the name Leading Luxury Group since 2013.⁴

3. THE OPERATION AND CONCENTRATION

- (7) The transaction in question involves two sale and purchase agreements ("SPAs") entered into by Profumerie Douglas and Orlando Italy on 17 May 2017 whereby CVC will acquire indirect and sole control of the Target. The two SPAs being legally conditional on each other they constitute a single concentration.⁵ The intended concentration therefore constitutes a merger within the meaning of Article 3(1)(b) of the EU Merger Regulation.

4. EU DIMENSION

- (8) This acquisition has an EU dimension within the meaning of Article 1(2) of the Merger Regulation since the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶. CVC and the target have an EU-wide turnover in excess of EUR 250 Million. CVC did not achieve more than two-thirds of its combined EU-wide turnover in one Member State.

³ Case No COMP/M.7690 - *CVC / Douglas Group*.

⁴ Case No COMP/M.7097 – *Bridgepoint / Orlando / La Gardenia Beauty*.

⁵ See in this respect recital 20 of the EU Merger Regulation.

⁶ Turnover calculated in accordance with Article 5 of the Merger Regulation.

5. ASSESSMENT

A Relevant product markets

- (9) The notifying party submits that in light of the activity of the parties the product markets relevant to the proposed transaction are (i) the distribution of perfumes and cosmetics, (ii) the procurement of cosmetics and perfumes and (iii) the provision of beauty treatment services.
- (10) According to the notifying party one relevant product market for the assessment of the transaction is the market for the retail distribution of cosmetics and perfumes.
- (11) In past decisions⁷ the Commission has adopted a narrower product market definition in the concerned sector identifying a distinct product market for the distribution of luxury perfumes and cosmetics and further distinguishing between the distribution of luxury perfumes and cosmetics sold via selective distribution networks and the distribution of luxury perfumes and cosmetics sold via travel retail outlets. The Commission has also investigated whether a further segmentation of luxury perfumes and cosmetics could be made, on the basis of the type of product into: perfume, make-up and skin care products.⁸
- (12) For the purposes of the present case, the precise product market definition can however be left open as the transaction does give rise to affected markets under any plausible alternative product market definition.
- (13) The notifying party further identifies the procurement of cosmetics and perfumes as a relevant upstream market.
- (14) In line with previous decisions,⁹ the Commission finds it appropriate to assess the impact of transactions concerning retail markets also on the corresponding procurement market.
- (15) The notifying party also identify a separate market for the provision of beauty treatments.
- (16) The Commission finds that, for the purposes of the present case, the precise product market definition can be left open, because the transaction would not give rise to any further competition concerns if the provision of beauty treatment is identified as a separate market.

B Relevant geographic market

- (17) The notifying party submits that markets for the retail of cosmetics and perfumes would have a local dimension, corresponding to the level of administrative provinces in Italy.

⁷ Case COMP/M.7097 *Bridgepoint/Orlando/La Gardenia Beauty* Case COMP/M.7094 *Advent/Groupe Nocibé*, para. 18; Case COMP/M.6212 *LVMH/Bulgari*, paras, 18-20; Case COMP/M.5068 *L'OrealYSL Beaute*, paras. 14-16.

⁸ Case COMP/M.5068 *L'Oreal/YSL Beaute*, paras. 11-13.

⁹ Case COMP/M.7094 *Advent/Groupe Nocibé*, para. 19.

- (18) In previous cases,¹⁰ the Commission indicated that, in the retail segment, the catchment area for an outlet is often delimited by a boundary within which the distribution outlet can be reached by car in no more than twenty minutes, with an indication that in particular in Italy this area would not exceed the size of administrative provinces.
- (19) As regards the procurement market, the notifying party considers that the potential relevant market is national in scope. This is in line with the Commission's analysis in previous decisions.¹¹
- (20) According to the notifying party, the relevant geographic market for the provision of beauty treatment services is the geographic area that a customer can reach within a twenty-minute drive time radius. In a previous case,¹² the Commission has indicated that this product market is local in scope, noting in particular, the similarity of the characteristics of these activities to the retail sale of luxury cosmetics and perfumes.

C Assessment

- (21) Based on the above, the relevant markets for the purpose of the decision are (i) the local cosmetics and perfumes retail markets in Italy at the level of the administrative provinces; (ii) the national cosmetics and perfumes procurement market in Italy and (iii) the local markets for the provision of beauty treatment services within a twenty-minute drive time radius in Italy.
- (22) In the cosmetics and perfumes retail market (*downstream* market), at national level the parties would have a combined market share of up to [10-20]% based on sales. However, at the level of administrative provinces, affected markets arise in ten provinces (Alessandra, Biella, Gorizia, Udine, Grosseto, Lucca, Pisa, Perugia, Rome and Pescara).
- (23) In relation to the procurement market (*upstream* market), the Parties activities do not lead to an affected market as the estimated combined shares of the parties are below 20%.
- (24) As to beauty treatment services, Profumerie Douglas is present only with a shop in Alto Adige and the estimated combined share of the Parties would not give rise to a combined share exceeding 20% in the relevant geographic market.

Additional factors

- (25) The Italian Competition Authority is the most appropriate authority to deal with the case, as the locus of the competitive effects of the transaction would fall within Italy, and the Italian Competition Authority possesses specific expertise concerning local markets in this sector.¹³

¹⁰ Case IV/M.1086 *Promodès/S21/Gruppo GS*, para. 23; IV/M.558 *La Rinascente/Cedis Migliarini*, paras. 9-10.

¹¹ Case COMP/M.7094, *Advent / Groupe Nocibé*.

¹² Case No COMP/M.7094 *Advent / Groupe Nocibé*, para 20.

¹³ See for instance ICA, decision No 24511 in case C11921 - *OI-Cosmetic / European Fragrances*, dated 3 September 2013.

6. REFERRAL

- (26) On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations¹⁴ (point 17) indicates that, in seeking a referral under Article 4(4), “*the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*”, and that “*such indications may be no more than preliminary in nature...*”. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in Italy, and that the requested referral would be consistent with point 20 of the notice.

7. CONCLUSION

- (27) For the above reasons, and given that the Italian Competition Authority has not expressed its disagreement, the Commission has decided to refer the transaction in its entirety to be examined by the Italian Competition Authority. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Johannes LAITENBERGER
Director-General

¹⁴ OJ C 56, 5.3.2005, p. 2.