

Completed acquisition by Unilever of Alberto Culver Company

ME/4805/10

The OFT's decision on references given on 16 June 2011. Full text of decision published 11 July 2011.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Unilever** is an Anglo-Dutch company dual-listed on Euronext Amsterdam, through Unilever N.V., and the London Stock Exchange, through Unilever plc. Each entity exists as a separate company but operate together as a single economic unit. Unilever is active in the development, manufacture, distribution and marketing of fast moving consumer goods products, principally in the food, home care and personal care product categories through a wide range of brands. Unilever's group turnover in the 2009/10 financial year was £[], of which the UK accounted for £[].¹
2. **The Alberto Culver Company** ('Alberto Culver') is a publicly listed US-based company active in the development, manufacture, distribution, and marketing of fast moving consumer goods, principally in the food, home care and personal care product categories through a wide range of brands. Alberto Culver's turnover for the year ending September 2009 was £[],² of which £[] was in the UK. The majority ([]) of Alberto Culver's turnover is generated in the US and Canada.

¹ The parties submitted €[] and €[], respectively converted using 2009 annual average spot exchange rate: £ to €: 0.8909 (Source: Bank of England).

² The parties submitted US\$[], converted using 2009 annual average spot exchange rate: £ to US\$: 0.9612 (Source: Bank of England).

TRANSACTION

3. On 27 September 2010, Unilever³ agreed to acquire Alberto Culver for US\$3.7 billion. The acquisition completed on 10 May 2011. As such, the statutory deadline for the OFT to make a decision pursuant to section 24 of the Enterprise Act 2002 (the Act) is 10 September 2011.

JURISDICTION

4. As a result of the transaction Unilever and Alberto Culver will cease to be distinct. The UK turnover of Alberto Culver exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied. The OFT therefore believes that it is, or may be the case, that a relevant merger situation has been created as a result of the transaction.
5. The transaction has been notified in a number of countries worldwide including the US and Ireland as well as the UK.

BACKGROUND

6. In its decision of 18 March 2010 (the Decision), the OFT announced that the merger created a realistic prospect of a substantial lessening of competition in the supply of bar soaps in the UK.⁴
7. To address the OFT's concerns, Unilever offered undertakings in lieu of a reference to divest the bar soap business of Alberto Culver that includes the Cidal, Wright's and Simple brands. The divestment of the Simple brand for bar soaps is to be effected by a perpetual and royalty-free licence covering UK, Ireland and the Channel Islands.
8. As set out in the OFT's Guidelines, the OFT has a preference for structural remedies however, in appropriate cases, the OFT will consider other structural or quasi-structural undertakings in lieu of a reference.⁵ The OFT considers that that the remedy offered by the parties to be sufficiently clear cut to remedy the competition concerns arising from the merger. The OFT considered that the requirement for an up-front buyer was both

³ Unilever N.V. and Unilever plc acting through affiliate companies Conopco, Inc. and Ace Merger, Inc.

⁴ Anticipated acquisition by Unilever of Alberto Culver Company, Case ME/4805/10, 18 March 2011.

⁵ Mergers – 'Exceptions to the duty to refer and undertakings in lieu of reference guidance' (OFT1122) paragraph 5.24.

reasonable and proportionate in seeking to ensure that the competition concerns were remedied.

9. Following the suspension of the OFT's duty to refer, Unilever entered into a sale agreement (conditional upon OFT's acceptance of the undertakings in lieu and completion of the merger) for the Alberto Culver bar soaps business with Lornamead.

CONSULTATION

10. On 16 May 2011, pursuant to schedule 10, paragraph 2(1) of the Act, the OFT published the proposed undertakings in lieu of a reference which it was minded to accept, inviting interested parties to give their views on the proposed remedy by 17.00 Friday 3 June 2011. The consultation text published on the OFT's website with the proposed UILs is included in the Annex to this decision.
11. The OFT received only one response to its consultation which expressed concern that the proposed remedy is not adequate to mitigate competition concerns. Specifically, the respondent raised two principal concerns:
 - i. first, that Unilever may impose price increases post-merger on Alberto Culver's brands across skincare, haircare and styling product ranges
 - ii. second, that it considers Simple to be an important sensitive skincare brand and that only the full divestiture of the Simple brand would ensure that the competitive constraint on Unilever's brands, Dove and Vaseline, is maintained.
12. In respect of the first concern, the OFT considers that this relates to the substantive assessment of the merger. This review has now completed and a Decision has been reached. The purpose of this consultation is to consider third party views on the remedies offered by the parties to resolve the SLC identified in that Decision. The OFT notes, however that during its investigation, it considered a number of personal care categories in which the parties overlapped including hair care, hair styling and skincare. The particular overlaps in skincare considered by the OFT were shower products, liquid hand wash and bar soaps.⁶ For the reasons set out in its

⁶ In a number of other personal care product categories, such as hand and body care and face care, the parties' overlap was limited. This was confirmed by third parties and raised no concerns.

Decision, the OFT found a realistic prospect of a SLC in the market for the supply of bar soaps in the UK only.

13. In respect of the second concern, as set out in the OFT's guidance, the scope of the undertakings in lieu should not go beyond what is necessary in order to remedy identified competition concerns in any particular case.⁷ The divestment replicates the full constraint in bar soaps which would be lost as a result of the merger and therefore the OFT is satisfied that the remedy addresses the competition concerns identified.
14. On the basis of the above, the OFT considers that the concerns raised by the respondent do not warrant a change of the proposed undertakings in lieu of a reference.

Purchaser approval

15. The parties' UIL offer in this case was subject to an upfront buyer requirement. This means the OFT suspended its duty to refer on the basis that it would only accept the undertakings in lieu once divestments have been agreed with an upfront buyer provisionally approved by the OFT.
16. The prospective purchaser of Alberto Culver's bar soaps business is Lornamead and whilst no concerns were expressed regarding the purchaser, the OFT's assessment is set out below.
17. Lornamead is independent of and unconnected to Unilever and can be reasonably expected to obtain the necessary manufacturing and supply contracts required to effectively compete with other suppliers of bar soaps in the UK.
18. Lornamead has the financial resource and expertise to operate the divestment business in competition to Unilever and other suppliers as evidenced in internal documents. It is a global personal care company with a portfolio of more than 36 brands including 'Vosene', 'Witch' and 'Rapid White' and provided internal documents illustrating its commitment to develop the Cidal, Wright's and Simple brands of bar soap.
19. Finally, the OFT does not consider that the divestment of the Cidal, Wright's and Simple bar soap brands to Lornamead will give rise to a

⁷ Mergers - *'Exceptions to the duty to refer and undertakings in lieu of reference guidance'* (OFT1122) paragraph 5.15

realistic prospect of a substantial lessening of competition within the UK. Lornamead's presence in the supply of bar soaps in the UK is limited at present. It supplies bar soaps in the UK under the 'Yardley' and 'Woods of Windsor' brands but given their minimal market shares, and the fact that they are 'niche' brands and the differences in distribution, it is considered that they do not currently exert a constraint on the brands of either Unilever or Alberto Culver.

20. The OFT is satisfied that Lornamead meets the criteria to be approved as a purchaser of the Alberto Culver bar soaps business.

DECISION

21. The OFT's Decision on 18 March 2011 concluded that the merger would be referred to the Competition Commission if Unilever failed to give suitable undertakings in lieu of reference pursuant to section 73 of the Act to address the competition concerns identified in the Decision.
22. The OFT considers that the undertakings offered by Unilever are clear cut and appropriate to remedy, mitigate or prevent the substantial lessening of competition and any adverse effects resulting from it. The OFT has therefore decided to accept the undertakings in lieu of reference offered by Unilever.
23. The merger will therefore not be referred to the Competition Commission and the undertakings, which have been signed by Unilever, will come into effect from this date.

Annex 1

Anticipated (now completed) acquisition by Unilever of Alberto Culver Company

Notice under Paragraph 2(1) Schedule 10 of the Enterprise Act 2002 of proposed undertakings in lieu of reference pursuant to section 73 of the Enterprise Act 2002

OFT's duty to refer

On 18 March 2011, the OFT announced its decision to suspend its duty to refer the anticipated acquisition by Unilever of Alberto Culver Company to the Competition Commission under section 33 of the Enterprise Act 2002 because the OFT was considering whether to accept appropriate undertakings in lieu of reference from Unilever. The acquisition completed on 10 May 2011.

The OFT believes that it is or may be the case that the merger may be expected to result in a substantial lessening of competition in relation to the supply of bar soaps because of the loss of a strong competitive constraint on Unilever's Dove brand. The text of the OFT's decision, published on 5 April 2011 (the Decision), provides details on the OFT's findings.

Accordingly, the OFT found itself under a duty to refer the merger to the Competition Commission.

Divestment undertakings offered by Unilever

To address the OFT's competition concerns, Unilever offered to divest the bar soaps business of Alberto Culver, which includes the Cidal, Wright's and Simple brands, thereby remedying the competition concerns arising from the merger.

Up-front buyer for Alberto Culver bar soaps business

The OFT considered that the requirement for an up-front buyer was both reasonable and proportionate in seeking to ensure that the competition concerns were remedied.

The proposed buyer for Alberto Culver's bar soap business, Lornamead, is identified in the undertakings in lieu, on which the OFT is consulting, and Unilever has entered into a sale agreement to transfer the business to the

identified purchaser conditional only upon OFT acceptance of the undertakings in lieu and completion of the transaction.

Suitability of the proposed purchaser

In approving a purchaser, the OFT's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. As such, the proposed purchaser must not raise prima facie competition concerns.

The purchaser, Lornamead, is a global personal care company with a portfolio of more than 36 brands including 'Vosene', 'Witch' and 'Rapid White'. It also has, with its 'CD' brand, one of the leading branded bar soaps in Germany. The acquisition of the Alberto Culver brands is in line with its overall business strategy. The management team has significant experience in this sector and has established supply relationships with UK retailers. Lornamead currently supplies bar soaps in the UK under the 'Yardley' and 'Woods of Windsor' brands but given their minimal market shares, that they are 'niche' brands and the differences in distribution, it is considered that they do not currently exert a constraint on the brands of either Unilever or Alberto Culver. The transaction is therefore not expected to raise competition concerns in the supply of bar soaps in the UK. Based on the financial data presented and its future plans for the brands, Lornamead is considered to be a credible buyer of the divestments.

Process going forward

The acceptance by the OFT of these proposed undertakings in lieu is dependent on this public consultation.

The OFT considers that the proposed undertakings offered by Unilever are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the decision.

The OFT therefore gives notice that it is minded to accept undertakings in lieu in the form of the proposed undertakings.

Download [the proposed undertakings in lieu](#) (pdf 145kb)

Before reaching a decision as to whether to accept the proposed undertakings, interested parties are invited to make their views known.

Representations should be made in writing to:

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Deadline for comments: 17.00 Friday 3 June 2011