

**COMPLETED ACQUISITION BY UNILEVER OF THE ALBERTO CULVER COMPANY**

**PROPOSED UNDERTAKINGS TO BE GIVEN BY UNILEVER TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002**

**WHEREAS:**

- (a) Unilever, through its affiliate companies Conopco, Inc. and Ace Merger, Inc., acquired Alberto Culver, on 10 May 2011;
- (b) The OFT therefore believes that it is or may be the case that a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the CC for further investigation where it believes that it is or may be the case that the creation of that merger situation has resulted, or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the acquisition of Alberto Culver by Unilever to the CC;
- (f) The OFT further considers that the undertakings given below by Unilever are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has resulted or may be expected from it, as specified in the Decision;

**NOW THEREFORE** Unilever hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has resulted or may be expected to result from it.

**1. Effective date of the undertakings**

- 1.1 These undertakings shall take effect from the date that, having been signed by Unilever, they are accepted by the OFT.

## 2. The divestment

- 2.1 Unilever shall, prior to acceptance of these undertakings by the OFT, enter into legally binding agreements to divest each of the Cidal and Wright's brands as a going concern to the Proposed Divestment Purchaser on terms approved by the OFT in advance of acceptance of these undertakings.
- 2.2 Unilever shall also, prior to acceptance of these undertakings by the OFT, agree to divest by way of an irrevocable, exclusive licence of perpetual duration the following assets to the Proposed Divestment Purchaser, on the terms outlined below and approved in advance by the OFT:
- (i) all intellectual property rights in and to the "Simple" name and related logo for bar soaps in the UK, Ireland and the Channel Islands, granting the Proposed Divestment Purchaser the right to use these intellectual property rights in the marketing, sale and distribution of Simple bar soaps in the UK, Ireland and the Channel Islands;
  - (ii) all intellectual property rights in and to "Simple" bar soaps in the UK, Ireland and the Channel Islands, i.e. all copyrights, design rights, know-how, manuals and confidential information (including in relation to the formula for Simple bar soaps), granting the Proposed Divestment Purchaser the right to use these intellectual property rights in the development, manufacture, marketing, sale and distribution of Simple bar soaps.

Together, the Cidal, Wright's and Simple bar soaps business to be divested is referred to in these undertakings as the "**Divestment Business**".

- 2.3 The Divestment Business shall include all existing inventory of Cidal, Wright's and Simple bar soap products.
- 2.4 Where required by the Proposed Divestment Purchaser, Unilever shall use all reasonable endeavours to procure an assignment to the Proposed Divestment Purchaser of the benefit of any manufacturing contracts relating to the manufacture of Cidal, Wright's and Simple bar soaps for sale in the UK, Ireland and the Channel Islands.
- 2.5 Unilever shall be deemed to have complied with its obligation under this paragraph 2 if, prior to the acceptance of these undertakings by the OFT, it has entered into a legally binding agreement conditional on OFT approval and completion of the Acquisition, provided that:

- (i) OFT approval is subsequently given; and
- (ii) the completion of the sale of the Divestment Business takes place by whichever is the later of the following dates:
  - (a) 3 months after the approval of the relevant purchaser by the OFT; or
  - (b) 3 months after the effective date of these undertakings, as set out in paragraph 1.1 above; or
  - (c) 1 month after completion of the Acquisition.

### **3. Approval of purchaser and terms of divestment**

3.1 In order for the OFT to approve the Proposed Divestment Purchaser and the terms of the divestment of the Divestment Business, Unilever and/or the Proposed Divestment Purchaser will satisfy the OFT, prior to acceptance of these undertakings by the OFT, that:

- (i) the acquisition by the Proposed Divestment Purchaser remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may expect to result from it, in particular, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effect resulting from it; and
- (ii) the Proposed Divestment Purchaser is independent of and unconnected to Unilever and the Group of Interconnected Bodies Corporate to which Unilever belongs and any Associated Person or Affiliate of Unilever or such Group of Interconnected Bodies; and
- (iii) the Proposed Divestment Purchaser has and will continue to have the financial resources, expertise, incentive and intention to run the Divestment Business as a viable and active business in competition with Unilever and other competitors in the bar soaps category in the UK; and
- (iv) the acquisition by the Proposed Divestment Purchaser of the Divestment Business does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

3.2 The OFT may require Unilever to provide it with such information and documentation as it may reasonably require to demonstrate to the

OFT that the Proposed Divestment Purchaser will fulfil the requirements set out in paragraph 3.1 above.

#### **4. Continued separation**

4.1 Except with the prior written consent of the OFT, following the divestment of the divested brands, Unilever or any member of the Group of Interconnected Bodies Corporate to which Unilever belongs:

- (i) shall not, directly or indirectly, hold, acquire, re-acquire or use:
  - (a) any Interest in the Divestment Business; or
  - (b) any Interest in any company carrying on or having Control of the Divestment Business.
- (ii) shall procure that no employee or director of Unilever or of any member of the Group of Interconnected Bodies Corporate to which Unilever belongs holds or is nominated to any directorships or managerial position in any company or other undertakings having Control of the Divestment Business without the OFT's prior written approval;
- (iii) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of any company or other undertaking having Control of the Divestment Business; and
- (iv) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of Unilever or of any member of the Group of Interconnected Bodies Corporate to which Unilever belongs directly or indirectly acquiring the Divestment Business or doing of any of the things listed in sub-paragraphs (i), (ii) and (iii) above.

#### **5. New Divestment on termination of the Simple Licence**

5.1 In the event that, following divestment of the Divestment Business, the licence referred to in Clause 2.2 above (the "Simple Licence") terminates for any reason, Unilever shall:

- (i) within 10 Working Days of becoming aware of the termination of the Simple Licence inform the OFT in writing of that fact; and

- (ii) using its best endeavours and acting in good faith comply with such written directions as the OFT may give to Unilever to enter into a new licence with a licensee approved by the OFT in accordance with the provisions of these undertakings (the "New Simple Licence"), provided always that such written directions must be of a similar nature to those contained in these undertakings with regard to the original divestment of the Divestment Business.
- 5.2 In determining, for the purposes of paragraph 5.1(ii), whether to require Unilever to enter into the New Simple Licence with a licensee approved by the OFT in accordance with the provisions of these undertakings, the OFT may have regard to any change of circumstances since the Decision.
- 5.3 Unilever shall notify the OFT in writing of the identity of each proposed licensee that makes an offer for the New Simple Licence together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 10 Working Days of receipt of such offers.
- 5.4 In the event that the OFT gives written directions under paragraph 5.1 for Unilever to enter into the New Simple Licence, paragraphs 3, 4, 5, 6 and 7 shall apply to the New Simple Licence in the same way that they applied to the Simple Licence.

## **6. Compliance**

- 6.1 Unilever shall comply with such written directions as the OFT may from time to time give:
  - (i) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
  - (ii) to do or refrain from doing anything so specified or described which they might be required by these undertakings to do or to refrain from doing.
- 6.2 Unilever shall cooperate fully with the OFT when the OFT is:
  - (i) monitoring compliance with the provisions of these undertakings; and
  - (ii) investigating potential breaches of the provisions of these undertakings.

- 6.3 Unilever shall procure that any member of the same Group of Interconnected Bodies Corporate as Unilever complies with these undertakings as if it had given them.
- 6.4 Where any Affiliate of Unilever is not a member of the same Group of Interconnected Bodies Corporate as Unilever, Unilever shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

## **7. Provision of information**

- 7.1 Unilever shall furnish promptly to the OFT such information as the OFT considers necessary to enable it to monitor these undertakings.

## **8. Interpretation**

- 8.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 8.2 References in these undertakings to any English law term for any legal status, interest, reference, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 8.3 In these undertakings, the word “including” shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word “included” and its derivatives shall be construed accordingly.
- 8.4 For the purposes of these undertakings:

**“the Act”** means the Enterprise Act 2002;

**“Affiliate”** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given to it in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

**“Alberto Culver”** means the Alberto Culver Company;

**“Associated Person”** means a person or persons associated with Unilever within the meaning of section 127(4) of the Act and includes any Subsidiary of such person or persons;

**“business”** has the meaning given to it by sections 129(1) and 129(3) of the Act;

**“CC”** means the Competition Commission;

**“Control”** shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**“the Decision”** means the OFT’s decision dated 18 March 2011 in connection with the anticipated acquisition by Unilever of Alberto Culver;

**“Divestment Business”** means the Cidal, Wright’s and Simple bar soaps business as described more fully in paragraph 2 of these undertakings;

**“Interest”** includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings; and for this purpose “an interest in shares” includes an entitlement by a person other than the registered holder to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

**“Group of Interconnected Bodies Corporate”** has the meaning given to it in section 129(2) of the Act; references to Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

**“OFT”** means the Office of Fair Trading;

**“Proposed Divestment Purchaser”** means Lornamead Acquisitions Limited i.e. the proposed purchaser of the Divestment Business;

**“Subsidiary”** shall be construed in accordance with section 1159 of the Companies Act 2006;

**“UK”** means the United Kingdom of Great Britain and Northern Ireland;

**“Unilever”** means Unilever plc and Unilever N.V., unless otherwise stated.

FOR AND ON BEHALF OF UNILEVER

Signature ..... Signature .....

Name ..... Name .....

Title ..... Title .....

Date ..... Date .....

(Director)

(Director/Company Secretary)