



DETERMINATION OF MERGER NOTIFICATION M/10/040 -

Unilever/Alberto Culver

Section 21 of the Competition Act 2002

Proposed acquisition by Unilever N.V and Unilever plc of Alberto-Culver Company

Dated 23 February 2011

Introduction

1. On 23 November 2010, in accordance with section 18 of the Competition Act 2002 (the "Act"), the Competition Authority (the "Authority") received a notification of a proposed transaction whereby Unilever N.V. and Unilever plc (together "Unilever") would acquire sole control of Alberto-Culver Company ("Alberto Culver").
2. On 20 December 2010, the Authority served two Requirements for Further Information on Unilever and Alberto Culver pursuant to section 20(2) of the Act. This automatically suspended the procedure for the Authority's phase one assessment.
3. Upon receipt of the responses to the Requirements for Further Information the "appropriate date" as defined in section 19(6) of the Act became the 25 January 2011.

The Undertakings Involved

The Acquirer

4. Unilever N.V. and Unilever plc are the two parent companies of the Unilever Group. These dual parent companies operate as a single economic entity.¹ Unilever N.V is incorporated under the laws of the Netherlands and Unilever plc is incorporated under the laws of England and Wales.
5. Unilever develops, manufactures, distributes and markets products internationally within two main categories: (i) food and beverages and (ii) home and personal care.
6. In the State, Unilever is active in the sale of products in the categories listed above in paragraph 5. However, Unilever has no manufacturing facilities in the State and co-ordinates the distribution of its products mainly through its own logistical network.

¹ According to the parties, the operation of a single economic entity is achieved through, *inter alia*, a series of agreements between the parent companies, having special provisions in their respective Articles of Association known as the "Foundation Agreements" and operating on the basis of the principles of Unity of Management, Unity of Operations and Unity of Shareholder's Rights.

7. For the financial year ending 2009, Unilever's worldwide group turnover was €39,823 million, with a turnover in the State of €225.9 million.

The Target

8. Alberto Culver is a company based in the United States of America ("U.S.") that develops, manufactures, distributes and markets products in the U.S. and internationally within two categories: (i) personal care and (ii) food and household products.
9. In the State, Alberto Culver is only active in the sale of personal care products. Alberto Culver supplies its products through [...] distributors as well as directly to [...].
10. For the financial year ending 30 September 2009, Alberto Culver had a worldwide turnover of approximately €1,131 million², with a turnover in the State of approximately €[...]³.

Rationale for the Proposed Transaction

11. Unilever states that globally hair products are a high-growth sector and the proposed transaction will enhance its product offering in hair conditioning, styling and shampoos. In addition, the acquisition by Unilever of skin care and skin cleansing products will, according to Unilever, supplement its existing portfolio of products.

Third Party Submissions

12. No third party submissions were received during the ten day period for third party submissions. Nonetheless, the Authority obtained the views of third parties including six retailers⁴, eight competitor suppliers and four others: namely, distributors/wholesaler companies. Their responses are described in the competitive assessment below.
13. On 3 February 2011, the Authority issued and served a Witness Summons on a third party to be examined under oath and to provide certain information. Following the receipt and review of the requested information, the Authority considered it was unnecessary to examine the third party under oath, and on 16 February 2011 revoked the Witness Summons.

Analysis

Introduction

14. The parties submit that their activities overlap in the State in a number of product areas. These product areas are:
 - Hair Care - shampoo, conditioners & treatments,
 - Hair Styling - styling products,
 - Skin Cleansing - bath & shower, bar soap and liquid hand wash,

² Using the ECB conversion rate for the year ending 30 September 2009 of €1 = \$1.352925.

³ Using the ECB conversion rate of €1=£0.875015.

⁴ These retailers account for over 70% of all sales of personal care products in the State.

- Skin Care - hand & body, face and lip care,
 - Deodorants
15. For the purposes of examining the proposed transaction, the Authority has divided its analysis into two parts. The first presents an assessment of the product areas where there is minimal overlap in the State, and the second provides a more detailed analysis of where there is more substantial overlap.

A. Minimal Overlap in the State

Views of the parties

16. The parties state that in a number of product areas where their activities overlap, the combined market share of the merged entity post-acquisition will be below [10-20]%⁵ with an increment of less than [0-5]%. The parties consider that in these product areas, namely, bath and shower, liquid hand wash, hand and body care, face care, lip care and deodorants, there will be no competition concerns arising from the proposed transaction.

Views of the Authority

17. The Authority agrees with the parties' view that there will be no substantial lessening of competition as a result of the proposed transaction in the product areas set out in paragraph 16 above. The Authority's view is based on:
- (i) an analysis of the market shares of the parties;
 - (ii) the availability of other suppliers in the market, and,
 - (iii) the fact that no third party raised a concern about these product areas.
18. Furthermore, in relation to the hair styling sector, the Authority engaged the services of Professor Patrick Paul Walsh of University College Dublin to conduct an econometrics report based on data provided by the parties. This report confirms that Unilever is only active in three segments of the hair styling sector, namely, cream/milk, gel and wax.
19. Unilever's recently acquired *Brylcreem* brand has a significant proportion of the cream/milk segment with a market share of approximately [80-90]%. Alberto Culver's products account only for [less than 1]% of this segment. As there will be a minimal increase in the market share of the merged entity post-acquisition in the cream/milk segment and because there are other suppliers active in this segment, the Authority considers that there will be no substantial lessening of competition as a result of the proposed transaction.

⁵ All market share values attributed to Unilever for 2009 have been adjusted to take account of Sara Lee Body Care's market shares, exclusive of those accounted for by the "Sanex" brand. The acquisition by Unilever of Sara Lee Body Care [Case M.5658 *Unilever/Sara Lee*] was approved by the European Commission on 17 November 2010 subject to a Commitment that Unilever fully divests the *Sanex* brand.

20. Table 1 below provides information on the incremental changes in the market shares, the market positions of the merged entity and the presence of other alternative suppliers in each product area where there is minimal overlap in the activities of the parties.

21. Table 1 shows:

- (i) the increase in market shares resulting from the proposed transaction is modest, ranging from [0-3]% to [0-8]%, and,
- (ii) that there are a sufficient number of alternative suppliers in each product area.

Table 1: Pre and post-acquisition market shares of the parties measured in Euro (€) for 2010 (and for 2009 where indicated).

Product Area	Unilever pre-merger	Alberto Culver pre-merger	Market Position (Measured by market share)	Other Suppliers (%market share by value)
<u>Skin Cleansing</u>				
bath & shower	[30-40]	[0-5]	1 st buying 9 th , remain 1 st	PZ Cussons (...); Private label (...), Johnson & Johnson (...), Colgate Palmolive (...), Other (...), Beiersdorf (...), Sanex (...), and Procter & Gamble (...).
Liquid hand wash	[20-30]	[0-5]	2 nd buying 7 th , remain 2 nd .	Palmolive (...), PZ Cussons (...), Private label (...), Other (...), Reckitt Benckiser (...), Irish Breeze (...), Sanex (...),
<u>Hair Styling</u>				
Cream/milk hair styling products	[80-90]	[0-5]		Charles Worthington, Procter & Gamble, L'Oréal, John Frieda.
<u>Skin Care</u>				
hand & body*	[20-30]	[0-5]	2 nd buying 8 th , remain 2 nd .	Johnson & Johnson (...), Beiersdorf (...), Private label (...), Reckitt (...), Others (...), L'Oreal (...).
face care*	[0-5]	[5-10]	9 th buying move to 5 th .	Procter & Gamble (...), L'Oréal (...), Beiersdorf (...), Johnson & Johnson (...) and Reckitt (...).
lip care	[20-30]	[...]		Nivea (...), Labello(...), Carmex (...), Boots (...), Blistex (...), Neutogena (...), Private Label (...).
<u>Deodorants</u>				
deodorants*	[60-70]	[0-5]	1 st buying 9 th , remain at 1 st .	Beiersdorf (...), Colgate Palmolive (...), Gillette (...), Revlon (...), Henkel (...) and Private label (...)

* Market share figures are for 2009

Source: The Authority based on information provided by the parties from a variety of sources, namely, Kantar World panel, AC Nielsen, Euromonitor and the econometrics reports commissioned by the Authority.

B. Substantial Overlap in the State

22. As set out above, the parties state that their activities overlap in a number of product areas in the State. However, the parties state that the only "affected markets" for the purposes of the proposed transaction are the following:

- hair care
 - hair styling
 - skin cleansing
23. The Authority notes that hair care and hair styling products are mainly sold through two channels, namely, retail outlets and hair-dressing salons. The Authority has in a previous decision⁶ concluded that these two channels constitute different product markets. The Authority does not see any reason to depart from this view for the purposes of assessing the proposed transaction.
24. There is no overlap in the activities of the parties in relation to the sale of hair care and hair styling products to hair-dressing salons. Consequently, this analysis will focus on the sale of hair care and hair styling products through retail outlets only. Similarly, the analysis also focuses on the sale of skin cleansing products through retail outlets only as this is where the parties' activities overlap.

Relevant Product and Geographic Markets

25. The Authority considers the product areas of hair care, hair styling and skin cleansing in turn.

Relevant Product Markets

1. Hair Care

Introduction

26. Hair Care products consist of products designed to clean, condition or repair the hair and can be categorised as shampoos, conditioners and treatments. These products can be further categorised by variant, that is, colour protect, anti-dandruff, volumising, 2-in-1, etc.

Views of the parties

27. The parties state that the hair care sector comprises (i) shampoos and (ii) conditioners and treatments. This segmentation is based on decisions of the European Commission⁷ (the "Commission") and of the Authority⁸.

Shampoos

28. The parties state that there is a single market for shampoo and that it is not appropriate to segment it further by variant or any other criterion for the following reasons:
- (i) whilst there are many variants of shampoos, (e.g., shampoos for dry, coloured, normal or greasy hair, anti-dandruff, 2-in-1, and volume-boosting shampoos) they all perform the same function of hair cleansing;

⁶ Case M/09/004 Unilever/TIGI decision of the Competition Authority dated 11 March 2009.

⁷ Case Comp/M.3149 Procter & Gamble/Wella decision dated 30/07/2003 at paragraph 12.

⁸ Case M/09/004 Unilever/TIGI decision dated 11/03/2009 at paragraph 15.

- (ii) customers often use a range of variants of shampoos, switching regularly between them;
- (iii) customers switch between brands and variants targeted at a particular demographic group and those aimed at generic family/household use, and,
- (iv) the production of different variants of shampoo requires only small variations in formulation and properties and can be manufactured using the same processes.

Conditioners & Treatments

- 29. The parties state that conditioners and treatments are products designed to protect, maintain or improve the condition of the hair or scalp. Conditioners, according to the parties, are generally rinse-through products while treatments are applied for a longer period for a more intensive use.
- 30. The parties consider that conditioners and treatments are part of the same product market for the following reasons:
 - (i) both conditioners and treatments perform the same function, that is, to protect or improve the condition of the hair and scalp, and
 - (ii) the manufacture of conditioners and treatments use a similar process and it is common for the products to be marketed under a single brand.

Previous decisions of the European Commission

- 31. The Commission has considered in the past that there may be separate product markets for shampoos, conditioners and treatments, styling products and colorants based on their different prices, use, characteristics and functionality.⁹
- 32. The Commission's market investigation in *Case M.3149 Proctor & Gamble/Wella*¹⁰ did not provide clear evidence that the market should be further segmented according to the specific end-use of different shampoo products. However, it did suggest that conditioners and treatments constituted a separate product market on the basis of product characteristics, application, functionality, price and frequency of use. The Commission did not come to a definite view on the matter and the exact product market definition was left open.

Views of the Authority

- 33. The Authority has received no evidence which would justify further segmentation of the market by the variant of shampoo, conditioner and treatment. Therefore, for the purposes of examining the proposed transaction, the Authority considers the narrowest relevant markets for which there is sufficient evidence. These are (i) the supply of shampoo

⁹ Cases M.3149 *Proctor & Gamble/Wella*, Case Comp/M.4193 *L'Oreal/The Body Shop* and Case Comp/M.4314 *Johnson & Johnson/Pfizer Consumer Healthcare*.

¹⁰ Decision dated 30 July 2003.

products to the retail sector and (ii) the supply of conditioner and treatment products to the retail sector.

2. Hair Styling

Introduction

34. Hair styling products are designed to create an “end look” as opposed to hair care products that wash and care for the hair. Hair styling products include mousses, gels, waxes, clays, putties, lotions and hair spray.

Views of the parties

35. The parties consider that hair styling products form a separate product market from other hair care products for the following reasons:
- (i) styling products are used to create an “end look”, and
 - (ii) these products have more of a personal involvement for the customer than shampoos or conditioner and treatments.
36. The parties also consider there to be separate product markets for (i) hairsprays and (ii) other styling products that include mousses, gels, waxes and lotions.
37. The parties consider the product market for other styling products is not gender specific and state that brands that cater only for men are rare and declining.
38. The parties state that Unilever’s *Brylcreem* brand of hair styling products are marketed as “male grooming” products and are positioned in stores away from other hair styling products. The parties further state that Alberto Culver’s hair styling products, *VO5* and *TRESemmé* are targeted at both male and female audiences. To illustrate this point, the parties provided Figure 1 below. Figure 1 shows the weighted distribution of hair styling products in the U.K. market only¹¹.

Figure One: Users weighted by styling brand and by gender in the U.K. for 2009.

[Figure One redacted]

Source: Kantar World panel Usage 18 week ending March 2010.

Previous decisions of the Commission

39. The Commission has considered whether there is a separate product market for hair styling products or distinct markets for hair spray, shaping gel, styling mousse, hair wax, setting lotions and clear settings.¹² In its decision in *Case M.3149 Proctor & Gamble/Wella*¹³ the Commission’s market investigation did not provide clear enough evidence to reach a conclusion on this issue.

¹¹ Similar data was not available for the Irish market.

¹² Case No. Comp M.3149 *Proctor & Gamble/Wella* paragraph 17, pp. 4.

¹³ *Ibid*, paragraph 17.

Views of the Authority

40. On the basis of the Authority's own market research, it considers that hair styling products may constitute a separate product market from other hair care products.
41. As stated above in paragraph 18, the Authority commissioned an econometrics reports from Professor Patrick Paul Walsh to establish whether the market for hair styling products could be further segmented by format and by gender. Furthermore, the Authority sought to establish whether there was closeness of competition between the parties' brands of hair styling products within these segments.
42. The results of the econometrics report indicate that hair styling products may be further segmented by format, i.e., cream/milk, gel, liquid, mousse and wax. As stated in paragraph 19, the Authority considers that there is minimal overlap between the parties' cream/milk hair styling products and therefore this segment is not considered further. The parties' activities overlap only in gel and wax hairstyling products.
43. The Authority also considered the data provided by the parties upon which Figure 1 above is based. Whilst this data refers to the U.K. only it does provide some guidance in assessing the relevant market in relation to the State.
44. This data suggests that hair styling products may be further segmented by gender. The data indicates that certain products are used more by males than females, for example, L'Oréal's *Studio Line* and Alberto Culver's *VO5 Extreme Style*. Other products are used more by females than males, for example, John Frieda's products, Alberto Culver's *TRESemmé* and Proctor & Gamble's *Pantene*. The data also shows that certain products are used by both males and females, for example, L'Oréal's *Studio Line*, Proctor and Gamble's *Wella* and Alberto Culver's *VO5* and *VO5 Core*.
45. The Authority's own market enquiries confirmed that Unilever's *Brylcreem* product is sold mainly on the "male grooming" shelves in retail outlets and is not positioned with all other hair styling products. Other products that appear with *Brylcreem* vary depending on the retailer but the majority also include the *Dax* brand. Some retailers place *VO5*, L'Oréal's *Studio Line* and *Garnier Fructis* with *Brylcreem*. The packaging of these products also suggests that they are marketed at men.
46. In light of the above, the Authority considers that hair styling products may be segmented by format and gender. For the purposes of examining the proposed transaction, the Authority considers that the narrowest relevant product market is the supply of male hair styling gel and wax products to the retail sector.

3. Skin Cleansing

Introduction

47. Skin cleansing products are designed for personal washing and include bath and shower products and soaps (bar soap and liquid hand wash).

Views of the parties

48. The parties consider that there is a single market for all skin cleansing products for the following reasons:
- (i) all of the products perform the same function, namely, personal washing, and
 - (ii) there is a high degree of supply-side substitutability in that all brands are represented across all types of skin cleansing products.
49. The parties state that there is significant overlap between liquid hand wash and bar soaps, with the demand for the former growing at the expense of the latter. The parties also state that the composition and manufacture process between liquid hand wash and bar soaps is different.
50. The parties only consider bar soaps to be an affected market for purposes of examining the proposed transaction. However, the parties state that there is no need for the Authority to come to a view on the relevant product market as there will be no substantial lessening of competition under any plausible alternative market definition.

Previous decisions of the Commission

51. Previous Commission cases have defined a separate product market for liquid hand wash.¹⁴ Also, [...].¹⁵

Views of the Authority

52. From the Authority's market enquiries, there is some evidence to suggest that there has been an increase in demand for liquid hand wash to the detriment of bar soaps. Market share data provided by the parties for the years 2008-2010 indicates that liquid hand wash, as a percentage of all soaps by value, has increased from [60-70]% in 2008 to [70-80]% in 2009 and to [70-80]% in 2010.
53. Against this backdrop, the market share of bar soaps has declined from [30-40]% in 2008 to [20-30]% in 2009 and to [20-30]% in 2010. Other data provided to the Authority¹⁶ shows that whilst over a nine year period (2001 to 2009) the market shares of bar soap suppliers has declined, the suppliers Unilever, Alberto Culver, Beiersdorf AG and Private Label have experienced modest increases in their market shares. In 2010, all four suppliers experienced a decline in their market shares.
54. The Authority was informed that some consumers are moving away from bar soap in favour of liquid hand wash products. The reasons provided are that liquid hand wash is considered more convenient and hygienic. Internal documents provided by the parties also support this information.

¹⁴ COMP/M.5230 *CapMan/Litorna/Cederroth* decision dated 30 July 2008.

¹⁵ Case M.5658 *Unilever/Sara Lee* ... [public version pending]

¹⁶ Euromonitor Report – July 2010.

55. In light of the above, there is no clear evidence to conclude whether skin cleansing products constitute a relevant product market or whether there should be further segmentation by bar soaps and liquid hand wash. In any event, the precise market definition can be left open since the proposed transaction does not raise competition concerns under any alternative market definition.
56. For the purposes of examining the proposed transaction, the Authority will consider the narrowest possible relevant market which is the supply of bar soaps to the retail sector.

Relevant Geographic Market(s)

Views of the parties

57. The parties state that both the Commission and national competition authorities have consistently defined the relevant geographic market for personal care products (that is, the sector into which hair care, hair styling and skin cleansing products are classified) as national.

Previous decisions of the Commission

58. In relation to hair care products to include hair styling products, the Commission concluded in its decision in Unilever/Sara Lee that [...]¹⁷
59. The Commission's market investigation in Unilever/Sara Lee concluded that [...].¹⁸

Views of the Authority

60. The Authority is aware from information provided by the parties and its own market enquiries that the majority of large retailers negotiate with the parties on a national basis in relation to their purchase of hair care, hair styling and skin cleansing products. However, two large retailers negotiate with the parties in relation to the U.K. and the State together.
61. For the purposes of examining the proposed transaction, the Authority considers the narrowest relevant geographic markets for the products to be the State.

Conclusion on the Relevant Product and Geographic Market

62. In conclusion, for the purposes of examining the competitive effects of the proposed acquisition, the Authority considers the narrowest possible relevant markets as follows:
- (i) the market for the supply of shampoo products to the retail sector in the State;
 - (ii) the market for the supply of conditioners and treatment products to the retail sector in the State;
 - (iii) the market for the supply of male hair styling gel and wax products to the retail sector in the State, and,

¹⁷ [public version still pending]

¹⁸ *Ibid*, footnote 15.

- (iv) the market for the supply of bar soaps to the retail sector in the State.

Competitive Assessment

Introduction

- 63. Information provided by the parties shows that the proposed transaction will occur in markets that are highly concentrated. The Authority assessed the competition characteristics of each relevant market to establish whether the proposed acquisition raises any concern.
- 64. The characteristics discussed are those identified by the parties, third parties and by the Authority during the course of its investigation, and include, where appropriate, closeness of competition, the role of retailers, and expansion and capacity constraints.

I. The market for the supply of shampoo products to the retail sector in the State.

Views of the parties

- 65. The parties state that there will be no substantial lessening of competition in the market for shampoos for the following reasons:
 - (i) the combined share of the merged entity post-acquisition will only be slightly above [10-20]%;
 - (ii) the increment in market share will be [5-10]%;
 - (iii) the shampoo market is highly competitive and the merged entity's brands will continue to face strong competition from suppliers such as Proctor & Gamble, L'Oréal, Kao, Henkel and private labels, and,
 - (iv) there is buyer power on the part of the major Irish retailers, low brand loyalty and high levels of promotions.
- 66. The information provided by the parties and set out in Table 2 below shows the share of supply by supplier brand of shampoo in the State for a specified time period in 2010.

Table 2: Shares of Supply in Shampoos, Ireland, w/e 04 Oct 2010

Brand	Value	
	* €000s	%
UNILEVER	[...]	[5-10]
- Dove	[...]	[0-5]
- Sunsilk	[...]	[0-5]
- Timotei	[...]	[0-5]
- Other	[...]	[0-5]
ALBERTO CULVER	[...]	[10-20]
- VO5	[...]	[0-5]
- TRESemmé	[...]	[5-10]
- Other	[...]	[0-5]
COMBINED	[...]	[10-20]
Procter & Gamble	[...]	[30-40]
L'Oréal	[...]	[20-30]
Johnson & Johnson	[...]	[5-10]
Kao Brands (John Frieda)	[...]	[0-5]
Cussons	[...]	[0-5]
Private label	[...]	[0-5]
Others	[...]	[5-10]
TOTAL	[...]	100

Source: Kantar (Turnover and Volume derived from market share)

Views of the Authority

67. The information provided by the parties in Table 2 above shows that the market for the supply of shampoo products to the retail sector in the State is highly concentrated, with a top three firm concentration ratio of greater than 60%.
68. For the analysis of this market, the Authority considered the increase in market share, the reaction of retailers and competitors, and internal documentation.

Market Share

69. The proposed transaction will result in Unilever acquiring an increased portfolio of shampoo products from Alberto Culver. These brands are: *VO5, TRESemmé, Alberto Balsam, Andrew Collinge* and *Simple*¹⁹.
70. Unilever is currently active in the market for shampoo products with its brands *Dove* and *Timotei*.

¹⁹ Alberto Culver's *Simple* range of hair care products has a limited distribution in the State in certain pharmacy and retail outlets.

71. The Authority considers the market for shampoo products to be highly concentrated with the top three suppliers of shampoo products, Proctor & Gamble ("P&G"), L'Oréal and Alberto Culver accounting for approximately [...] % of the market by value in 2010. As a result of the proposed acquisition, Unilever will move from fourth to third in the market with a market share of [10-20] %.
72. The Authority considers that post-acquisition, the merged entity will not have the ability and incentive to raise prices given the presence of P&G and L'Oréal with significant market shares.

Reaction of Retailers

73. The Authority contacted five retailers accounting for approximately 85% of all shampoo sales in the State in 2010. None of these retailers expressed a concern about the proposed transaction.
74. The reaction of the retailers was mixed. Some indicated that they had delisted *Dove*, *TRESemmé* and *VO5* products in the past. No retailer considered the parties' brands to be "must-haves"²⁰. Two retailers stated that the parties' brands are close competitors but their responses do not refer to the same brands.
75. During the course of the Authority's market enquiries, a third party active in the hair care sector in the State stated that the main competitors for *TRESemmé* are P&G's *Head and Shoulders* and *Pantene* brands and Unilever's *Timotei*, and *Sunsilk* brands. According to this third party, *Dove* would not be a close competitor for *TRESemmé*.
76. Furthermore, this third party stated that *VO5* appeals to the mass market whereas *TRESemmé* is a brand that sits in between the salon and mass market. Other suppliers mentioned in this segment are Charles Worthington and John Frieda.

Reaction of Competitors

77. The Authority contacted six suppliers²¹ of hair care products in the State regarding the proposed transaction. No supplier expressed a concern about the proposed transaction.
78. One supplier stated that *Alberto Balsam* was close to *Timotei* but also listed *Fructis* and *private label* in this category. Another supplier stated that *Sunsilk* and *VO5* were close competitors. The Authority is aware that the *Sunsilk* brand was discontinued in the State in mid-2010.

Internal Documents

79. Amongst the documentation provided by Alberto Culver is an internal review of the Irish Hair Care market dated 28 October 2010. Table 3 below sets out the top 15 brands in terms of Hair Care (excluding hair styling) in the State as concluded by this review.

²⁰ A brand for which there are few relevant alternatives and which retailers have to keep on their shelves in order to prevent the loss of substantial sales.

²¹ Two responses relate to the same brand.

80. This review indicates that *TRESemmé* and *Dove* are some distance apart in terms of position in the market. However, *Timotei* and *VO5* are noted to be closer in terms of ranking.

Table 3: Top 15 brands of hair care by brand owner in the State as noted by Alberto Culver Internal Documentation

Market Position	Brand Name	Brand Owner	Market Position	Brand Name	Brand Owner
1.	Elvive	L’Oreal	8.	VO5	Alberto Culver
2.	Pantene	Proctor Gamble &	9.	John Frieda	Kao
3.	Head Shoulders n	Proctor Gamble &	10.	Fructis	L’Oreal
4.	TRESemmé	Alberto Culver	11.	Dove	Unilever
5.	Herbal Essence	Proctor Gamble &	12.	Johnson’s	Johnson & Johnson
6.	Aussie	Proctor Gamble &	13.	Alberto Balsam	Alberto Culver
7.	Timotei	Unilever	14.	Private Label	Private Label

81. The internal documentation provided by Alberto Culver states that [...]
82. The documentation also states that [...]. This is confirmed by a Euromonitor report on the hair care sector in Ireland dated 15 June 2010 that was provided to the Authority by a third party.
83. From an analysis of the reactions of the retailers and competitors, and a review of the internal documentation, the Authority considers that, post-acquisition, the merged entity will continue to face competition from the brands of other suppliers and in particular from P&G and L’Oréal. Moreover, the Authority’s market enquiries indicate that the parties’ brands are not close substitutes.

Conclusion

84. In light of the above, the Authority considers that the proposed merger does not raise any competition concerns in the State in the market for

the supply of shampoo products to the retail sector. In summary, the reasons for this view are:

- (i) the merged entity will continue to face competition from both Proctor & Gamble and L'Oréal in particular and also from suppliers such as Kao, Johnson & Johnson and others;
- (ii) the combined market share of the merged entity post-acquisition will be approximately [10-20]%;
- (iii) the majority of the retailer responses indicate that Unilever and Alberto Culver brands are not direct substitutes for each other;
- (iv) one supplier who noted that *VO5* and *Timotei* were in close competition also listed L'Oréal's *Garnier Fructis* and private label products as close substitutes;
- (v) the retailer responses indicate that neither Unilever nor Alberto Culver have what they consider to be "must-have" brands, and,
- (vi) internal documentation suggests that the parties' hair care products are not in close competition with each other.

II. The market for the supply of Conditioner and Treatment products to the retail sector in the State.

Views of the parties

85. The parties state that there will be no substantial lessening of competition in the market for the supply of conditioners and treatments for the following reasons:
- (i) the combined share of the merged entity post-acquisition will be less than [20-30]%;
 - (ii) the merged entity's brands will continue to face strong competition especially from the market leader, P&G, and,
 - (iii) the existence of buyer power on behalf of the major Irish retailers.
86. Table 4 below, provided by the parties, sets out the share of supply by supplier brand in the State for a specified time period in 2010.

Table 4: Shares of Supply in Conditioners, Ireland w/e 04 Oct 2010

Brand	Value	
	* €000s	%
UNILEVER	[...]	[5-10]
- Dove	[...]	[0-5]
-Sunsilk	[...]	[0-5]
- Timotei	[...]	[0-5]
- Other	[...]	[0-5]
ALBERTO CULVER	[...]	[10-20]
- VO5	[...]	[5-10]
- TRESemmé	[...]	[5-10]
- Other	[...]	[0-5]
COMBINED	[...]	[20-30]
Procter & Gamble	[...]	[20-30]
L'Oréal	[...]	[20-30]
Johnson & Johnson	[...]	[0-5]
Kao Brands (John Frieda)	[...]	[5-10]
Cussons	[...]	[0-5]
Private label330	[...]	[0-5]
Others	[...]	[0-5]
TOTAL	[...]	100

Source: Kantar World panel

Views of the Authority

87. The information provided by the parties in Table 4 above shows that the market for the supply of shampoo products to the retail sector in the State is highly concentrated, with a top three firm concentration ratio of greater than 60%.
88. For the analysis of this market, the Authority considered the increase in market share, the reaction of retailers and competitors, and internal documentation.

Market Share

89. The Authority considers the market for conditioners and treatments products to be highly concentrated with the top three suppliers of shampoo products, Proctor & Gamble ("P&G"), L'Oréal and Alberto Culver accounting for approximately [...] % of the market by value in 2010.
90. As a result of the proposed acquisition, Unilever will move from fifth to third in the market with a market share of [20-30]%, behind P&G ([20-30]%) and L'Oréal ([20-30]%).
91. The Authority considers that post-acquisition, the merged entity will not have the ability and incentive to raise prices given the presence of P&G and L'Oréal with significant market shares.

Reaction of Retailers and Competitors

92. The retailer and competitor responses summarised above in paragraphs 73 to 78 also apply to the market for the supply of conditioner and treatments to the retail sector. All five retailers surveyed expressed no concerns regarding the proposed transaction.²² No competing suppliers raised a concern about the proposed transaction.
93. With specific regard to conditioners and treatment products, only one retailer considered Alberto Culver's *Alberto Balsam* and Unilever's *Timotei* products to be in close competition.

Internal Documents

94. The comments noted above in paragraphs 79 to 83 equally apply to the supply of conditioners and treatments to the retail sector.
95. From an analysis of the reactions of the retailers and competitors, and a review of the internal documentation, the Authority considers that post-acquisition the merged entity will continue to face competition from the brands of other suppliers and in particular from P&G and L'Oréal. Moreover, the Authority's market enquiries indicate that the parties' brands are not close substitutes.

Conclusion

96. In light of the above, the Authority considers that the proposed merger does not raise any competition concerns in the State in the market for the supply of conditioner and treatment products to the retail sector. The reasons for this view are summarised as follows:
 - (i) the combined market share of the merged entity post-acquisition will be approximately [20-30]%;
 - (ii) the merged entity will continue to face competition from both P&G and L'Oréal in particular and suppliers such as John Frieda's brand *Kao*, Johnson & Johnson and others;

²²These five retailers account for approximately 86% of the total sales of Conditioners and Treatments for 2010. Source: Kantar World panel Ireland.

- (iii) the majority of the retailer responses suggest that Alberto Culver's TRESemmé and Andrew Collinge products do not compete directly with Unilever's Dove and Timotei ranges;
- (iv) the supplier who noted that *VO5* and *Timotei* were in close competition also listed L'Oréal's *Garnier Fructis* and private label products as close substitutes, and,
- (v) internal documentation suggests that the parties' hair care products are not in close competition with each other.

III. The market for the supply of male hair styling gel and wax products to the retail sector in the State.

Views of the parties

- 97. The parties state that the hair styling market is characterised by strong branded competitors such as P&G, L'Oréal and John Frieda's Kao brand that will continue to compete with the merged entity post-acquisition.
- 98. The parties also state that Alberto Culver's hair styling brands, i.e., *VO5*, *TRESemmé*, *Alberto Balsam* and *Andrew Collinge*, are not close competitors to Unilever's recently acquired Sara Lee's *Brylcreem* brand.
- 99. The parties explain that whilst the Alberto Culver *VO5 Extreme Style* is weighted towards male users, it is targeted at a younger male audience than *Brylcreem*.
- 100. In light of the above, the parties do not consider that *Brylcreem* and *VO5 Extreme Style* are close competitors.
- 101. The information provided by the parties in Table 5 below, shows the market share of suppliers in the State for a specified time period in 2009²³.

²³ 2010 data not available

Table 5: Share of supply in hair styling products, Ireland 2009

Supplier	All hair styling (Including Hairspray)		Hair styling (Excluding Hairspray)	
	Value (€000s)	%	Value (€000s)	%
UNILEVER	[...]	[20-30]	[...]	[30-40]
ALBERTO CULVER	[...]	[10-20]	[...]	[5-10]
Combined UL and AC	[...]	[30-40]	[...]	[40-50]
COLET	[...]	[0-5]	[...]	[0-5]
JOHN FRIEDA	[...]	[5-10]	[...]	[10-20]
L'OREAL	[...]	[20-30]	[...]	[10-20]
LORNA MEADE	[...]	[5-10]	[...]	[0-5]
PROCTER & GAMBLE	[...]	[20-30]	[...]	[20-30]
SCHWARZKOPF & HENKEL	[...]	[0-5]	[...]	[0-5]
PRIVATE LABEL	[...]	[0-5]	[...]	[0-5]
OTHERS	[...]	[0-5]	[...]	[0-5]
TOTAL	[...]	100	[...]	100

Source: AC Nielsen

Views of the Authority

102. The information provided by the parties in Table 5 above shows that the market for the supply of hair styling products to the retail sector in the State is highly concentrated, with a top three firm concentration ratio of greater than 60%.
103. For the analysis of this market, the Authority considered the increase in market share, the reaction of retailers and competitors, and internal documentation.

Market Concentration

104. From the figures provided in Table 5 above, the combined market share of the merged entity in hair styling products post-acquisition will be [40-50]%.

105. The econometrics report prepared by Professor Patrick Paul Walsh provides information on the market shares of the parties before and after the proposed acquisition divided by gel and wax hair styling products. This information is set out in Table 6 below²⁴.

Table 6: Market Shares by format of hair styling products pre- and post-acquisition.

Segment	Pre-Acquisition Alberto Culver	Pre-Acquisition Unilever	Pre-Acquisition Others	Post-Acquisition Merged Entity	Post-Acquisition Others
Gel	[10-20]	[30-40]	[50-60]	[40-50]	[50-60]
Wax	[20-30]	[10-20]	[60-70]	[40-50]	[60-70]

106. The information in Table 6 above shows that for all gel and wax hair styling products, the merged entity will continue to face competition from other suppliers post-acquisition. The cross price effects and conclusions of the econometric study are discussed below at paragraphs 113-117.

Retailers Responses

107. Only one retailer expressed a concern and this was that, post-acquisition, Unilever would account for approximately 99% of the hair styling segment of the men’s grooming market. This retailer also stated that overall this segment of the personal care sector was not significant to it in terms of sales and that there were credible alternative suppliers, namely, L’Oréal and Schwarzkopf present.

108. Four of the five retailers stated that *Brylcreem* is a “must-have” brand and only one retailer stated that the parties’ brands were close competitors.

109. One retailer confirmed that it had recently de-listed the entire *VO5* range of hair styling products for commercial reasons.

Competitor Responses

110. The Authority contacted three suppliers of hair styling products in the State. None of these suppliers raised a concern about the proposed transaction. Also, none of these suppliers considered *Brylcreem* and Alberto Culver’s hair styling products to be close competitors.

The Authority’s own market research

²⁴ As the parties’ activities overlap substantially in gel and wax, these are the only formats for which data is shown.

111. The Authority's market enquiries²⁵ confirmed that only one retailer positioned Unilever's *Brylcreem* products with Alberto Culver's *VO5* products. This retailer also sold L'Oréal's *Garnier Fructis* brands alongside the parties' brands.
112. The Authority considers that the reactions of the retailers and competitors, and the outcome of its own market research indicate that the parties' hair styling products are not in close competition.

Econometrician's Report

113. As stated above, the Authority engaged the services of Professor Patrick Paul Walsh to conduct an econometrics report based on data provided by the parties. According to Professor Walsh's report, post-acquisition the merged entity will have a total market share of [40-50]% in gel products and [30-40]% in wax products.
114. The results indicate that the own-price effect on average is quite elastic. Essentially, this means that if the parties were to raise the price of either their gel or wax brands by 1%, their sales of either product would fall by more than 1%. Hence, they would have little or no incentive to raise price significantly post-acquisition.
115. The report shows that wax was the least price sensitive segment. However, the cross-price effects were also strong. Whilst the price-cost margin analysis indicates that the merged entity will have an ability to increase prices post-acquisition, the cross-price effects show that the merged entity will be constrained by the brands of competitors.
116. Professor Walsh states that Unilever's *Brylcreem* and Alberto Culver's brands do, on average, feel significant price pressures from other brands. He concludes:

Overall, competition from other brands outside of the merged entity will ensure that mark-ups will not increase significantly in the sub-markets of the product after the merger.

Conclusion

117. In light of the above, the Authority considers that the proposed merger does not raise any competition concerns in the State in the market for the supply of male hair styling gel and wax products to the retail sector. The reasons for this view are summarised below:
 - (i) Alberto Culver's brands and *Brylcreem* are not considered close substitutes. Only one retailer considered *VO5* to be the closest competing product with *Brylcreem* and only one retailer positions *VO5 Extreme Style* for sale with *Brylcreem*;
 - (ii) the retailer who expressed a concern stated that overall this segment of the personal care sector was not significant in terms of sales and furthermore that there are credible alternative suppliers, namely, L'Oréal and Schwarzkopf;

²⁵ The Authority conducted a survey of 6 retailers comprising of 13 stores in or about Dublin City Centre and the greater Dublin area.

- (iii) there are other suppliers of hair styling products that could be considered substitutable for *Brylcreem* post-acquisition, namely, P&G's *Shockwaves*, L'Oréal's *Studio Line*, L'Oréal *Garnier Fructis* and Schwarzkopf's brands, and,
- (iv) the econometrics report prepared by Professor Walsh concludes that other brands will exert competitive constraints on the brands of the merged entity post-acquisition.

IV. The market for the supply of bar soaps to the retail sector in the State.

Views of the parties

118. The parties state that there are a number of alternative suppliers of both liquid hand wash and bar soaps in the State including: Colgate-Palmolive's *Palmolive*, Beiersdorf's *Nivea*, PZ Cussons' *Imperial Leather*, *Carex* and *Pearl*, Johnson & Johnson's *Johnsons* and *Neutrogena* and Reckitt Benckiser's *Dettol* and *E45*.
119. The parties also state that private label is a strong competitor. The parties note that their combined market share of the liquid hand wash market post-acquisition will be [10-20]%, with an increment of just [0-5]%. For bar soaps, the combined post-acquisition market share will be [40-50]%. However, the parties state that this will not lead to a substantial lessening of competition for the following reasons:
- (i) the high market shares for bar soaps are reflective of the maturity of the market and not of a lack of competition. Retailers, according to the parties, are increasingly reluctant to devote shelf space to bar soaps;
 - (ii) there is a substantial private label presence ([10-20]%) as well as branded competitor products;
 - (iii) the parties state that Unilever's *Dove* soap is highly differentiated from those soap products of Alberto Culver. For example, Alberto Culver's *Simple* soaps are marketed on neutrality and efficacy whilst *Dove* is known for its moisturising qualities. Also, Alberto Culver's other soap products *Cidal* and *Wright's* are carbolic soaps containing mild disinfectant, and,
 - (iv) the parties submit that there is strong retail buyer power that will constrain the merged entity post-acquisition. (The parties state that [60-70]% of all bar soaps sold in the State are sold through the top five retailers, with approximately [30-40]% of these sales are through Tesco alone.)
120. The information provided by the parties and set out in Table 7 below, shows the market share of suppliers in the State for a specified time period in 2010.

Table 7: Soaps: w/e 03 Oct 2010 Ireland value shares

Brand	Bar soap		Liquid wash hand		All soaps	
	€000s	%	€000s	%	€000s	%
UNILEVER	[...]	[20-30]	[...]	[20-30]	[...]	[20-30]
- Dove	[...]	[20-30]	[...]	[0-5]	[...]	[5-10]
- Lux	[...]	[0-5]	[...]		[...]	[0-5]
- Pears	[...]	-	[...]	[0-5]	[...]	[0-5]
- Radox	[...]	-	[...]	[10-20]	[...]	[10-20]
- Other	[...]	-	[...]		[...]	
ALBERTO CULVER	[...]	[10-20]	[...]	[0-5]	[...]	[0-5]
- Simple	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]
- Wright's	[...]	[0-5]	[...]		[...]	[0-5]
- Other	[...]	[0-5]	[...]		[...]	[0-5]
COMBINED	[...]	[30-40]	[...]	[20-30]	[...]	[20-30]
PZ Cussons	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]
Colgate Palmolive	[...]	[10-20]	[...]	[20-30]	[...]	[20-30]
Procter & Gamble	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Johnson & Johnson	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Reckitt Benckiser	[...]	[...][5-10]	[...]	[5-10]	[...]	[5-10]
Beiersdorf (Nivea)	[...]	[...][0-5]	[...]	[0-5]	[...]	[0-5]

Irish Breeze	-	-	[...]	[0-5]	[...]	[0-5]
Sanex	-	-	[...]	[0-5]	[...]	[0-5]
Private Label	[...]	[5-10]	[...]	[10-20]	[...]	[10-20]
Other	[...]	[5-10]	[...]	[5-10]	[...]	[5-10]
TOTAL	[...]	100	[...]	100	[...]	100

Source: Kantar World panel

Views of the Authority

121. The information provided by the parties in Table 7 above shows that the market for the supply of bar soap products to the retail sector in the State is highly concentrated.
122. For the analysis of this market, the Authority considered the increase in market share, the reaction of retailers and competitors, and internal documentation.

Market Share

123. Unilever is active in both bar soap and liquid hand wash mainly through its *Dove* brand. Unilever also supplies the *Pears* and *Lux* soap brands. Alberto Culver is active in the supply of the *Simple* branded soaps as well as under the *Cidal* and *Wright* brands.
124. Post-acquisition, the merged entity would have a market share of bar soaps (by value) of [30-40]%, followed by Colgate Palmolive ([10-20]%), PZ Cussons ([10-20]%), Others ([5-10]%) and Private Label ([5-10]%).

Retailer Responses

125. From its market enquiries, the Authority was informed by six retailers²⁶ that they did not have a concern about the proposed transaction. One reason offered was that the market for bar soaps was in decline, losing sales to liquid hand wash.
126. The retailers were asked to provide information on the closest competing brands to the bar soap products sold by them. As the parties' *Dove* and *Simple* brands account for [20-30]% and [5-10]% of their market share respectively, these brands are focused on in this analysis. Table 8 below summarises their responses.

²⁶ The Authority contacted 6 retailers in total for all product areas. Because one retailer is not active in the sale of the parties hair care and hair styling products, its views are not considered in the previous sections of this determination. However, this retailer does sell the parties' soap products and is therefore included in the retailer responses in relation to bar soaps.

Table 8: Retailer Responses²⁷ in relation to the closeness of competition in relation to bar soaps.

Retailer	Must-have Brand	Closest competitor brand to Dove	Closest competitor brand Simple to
A	No	Palmolive	None
B	No	Palmolive	Imperial Leather
C	Dove	Palmolive/Simple/Nivea	Dove/Nivea
D	No	Not completed	Not completed
E	No	Own Brand	Own Brand
F	No	Imperial Leather	Dove

Source: Market enquiries by the Authority

127. Retailer C confirmed that they positioned *Palmolive*, *Simple* and *Nivea* as close competitors on the basis that they have a similar brand proposition. Retailer F stated that *Dove* and *Simple* were the closest competitor brands based on the market ranking data it had.

Reaction of Competitors

128. The Authority contacted four suppliers of bar soap products in the State. Whilst one supplier stated that *Simple* was a substitute for *Dove*, it also listed *Nivea* and *Johnson & Johnson* as being close substitutes for *Dove*. Another supplier stated that *Pears*, *Palmolive* and *private label* were all substitutes for *Simple*.
129. Two suppliers confirmed that they could increase capacity in the short-term to meet an increase in demand. One supplier indicated that it would consider outsourcing to meet any increase in demand. One supplier stated that it could not increase production capacity in the short term.
130. The Authority considers that the retailer and competitor responses indicate that whilst *Simple* and *Dove* are considered by a few to be close competitors, other brands are also considered to compete directly with them.

Internal Documents

²⁷ The retailer responses are not recorded in any particular order.

131. The internal documentation shows that [*Palmolive* and private label are considered to be strong competitors to the *Dove* range and that *Dove* loses out to *Simple*, *Palmolive Imperial Leather* and *Wrights*.

Further data provided by the parties

132. The parties were asked to provide further information in relation to the closeness of competition between the brands *Dove* and *Simple* in particular. The parties provided switching data that confirms that *Simple* is not a major constraint on *Dove*. *Dove*, due to its large market share, does constrain *Simple* to some degree, but so do other competing products.

Conclusion

133. In light of the above, the Authority considers that the proposed merger does not raise any competition concerns in the State in the market for the supply of bar soap products to the retail sector. The reasons for this view are summarised as follows:
- (i) whilst post-acquisition, the merged entity will have a combined market share of approximately [30-40]%, there are other competing suppliers in the market, some of whom are major international companies with significant market shares and substantial resources;
 - (ii) bar soap sales are acknowledged to be in decline over the past number of years and this is borne out by the market share data, albeit that *Dove* and *Simple* brands only experienced a decline in 2010;
 - (iii) as bar soap sales have declined in the State over the years 2008-2010, liquid hand wash sales have increased;
 - (iv) bar soap products are considered by a number of retailers and competitors to be EDLP (Every Day Low Price) products which are characterised by little investment and low margins;
 - (v) three of the four main competitors of the parties in the State have confirmed that they could increase capacity in the short-to-medium term should prices increase post-acquisition;
 - (vi) whilst *Dove* and *Simple* are close competitors, there are other alternative suppliers in the market which supply substitutes to the parties' brands. These brands are *Nivea*, *Palmolive* and *Imperial Leather*;
 - (vii) switching data provided by the parties confirms that *Simple* is not a major constraint on *Dove*. *Dove*, due to its large market share, does constrain *Simple* to some degree, but so do other competing products such as *Palmolive*, *Johnson & Johnson* and *Private Label*;
 - (viii) In relation to the overall soap product area (comprised of both bar soap and liquid hand wash), there will only be negligible incremental change in the merged entity's combined market share, with an increase of [0-3]% in liquid hand wash and [0-5]% for all soaps, and,

- (ix) of the six retailers surveyed none raised a concern regarding the proposed transaction.

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby Unilever N.V. and Unilever plc would acquire sole control of Alberto-Culver Company will not be to substantially lessen competition in markets for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition Authority

Gerald FitzGerald

23 February 2011