

Statement of Preliminary Issues

Zoetis Inc/ Betrola Pty Limited (which owns the Jurox group of companies)

12 November 2021

Introduction

1. On 28 October 2021, we registered an application from Zoetis Inc. (Zoetis or the Applicant) seeking clearance to acquire Betrola Pty Limited, which owns the Jurox group of companies (Jurox) (the Proposed Acquisition).¹
2. The Commission will give clearance if it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
3. This statement of preliminary issues sets out the issues we currently consider to be important in deciding whether or not to grant clearance.²
4. We invite interested parties to provide comments on the likely competitive effects of the Proposed Acquisition. We request that parties who wish to make a submission do so by close of business on **26 November 2021**.
5. The Commission acknowledges that some interested parties may face challenges during some COVID-19 alert levels. This may impact their ability to submit within these timeframes. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

The parties

6. Zoetis is a global animal healthcare company that develops, manufactures and distributes healthcare treatments for companion animals (such as cats and dogs) and production animals (such as sheep and cattle).
7. Jurox is an Australia-based animal healthcare company that also develops, manufactures and distributes healthcare treatments for companion and production

¹ A public version of the application is available on our website at:
<http://www.comcom.govt.nz/businesscompetition/mergers-and-acquisitions/clearances/clearances-register/>

² The issues set out in this statement are based on the information available when it was published and may change as our investigation progresses. The issues in this statement are not binding on us.

animals. Jurox's business includes a New Zealand subsidiary, Jurox New Zealand Limited.

Our framework

8. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.³ As required by the Commerce Act 1986 (the Act), we assess mergers and acquisitions using the substantial lessening of competition test.
9. We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).⁴ This allows us to assess the degree by which the Proposed Acquisition might lessen competition in a market.
10. If the lessening of competition resulting from the Proposed Acquisition is likely to be substantial in a market, we will not give clearance. When making that assessment, we consider, among other matters:
 - 10.1 constraint from existing competitors – the extent to which current competitors compete and the degree to which they would expand their sales if prices increased;⁵
 - 10.2 constraint from potential new entry – the extent to which new competitors would enter the market and compete if prices increased; and
 - 10.3 the countervailing market power of buyers – the potential constraint on a business from the purchaser's ability to exert substantial influence on negotiations.

Market definition

11. We define markets in the way that we consider best isolates the key competition issues that arise from the Proposed Acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.⁶
12. In New Zealand, Zoetis and Jurox compete to supply products used to treat ailments in companion and production animals. In its application for clearance, Zoetis

³ Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2019. Available on our website at www.comcom.govt.nz.

⁴ *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

⁵ References to price increases in this document should be taken to include a reduction in quality, service or innovation.

⁶ Section 3(1A); See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

identified 12 categories of products where Zoetis and Jurox supply competing products in New Zealand, although the level of overlap in each category varies.⁷ The 12 product categories are:

- 12.1 oral penicillin treatments for companion animals;
 - 12.2 injectable penicillin treatments for companion animals;
 - 12.3 opioid-based pre-anaesthetics and sedatives for companion animals;
 - 12.4 non-opioid-based pre-anaesthetics and sedatives for companion animals;
 - 12.5 antidotes for short term pre-anaesthetic sedatives for companion animals;
 - 12.6 intramammary antibiotic treatments for dry cows;
 - 12.7 intramammary antibiotic treatments for lactating cows;
 - 12.8 teat sealants for cows;
 - 12.9 anthelmintic treatments (including endoparasiticides and endectocides⁸) for sheep;
 - 12.10 anthelmintic treatments (including endoparasiticides and endectocides) for cattle;
 - 12.11 oral worming treatments for horses; and
 - 12.12 nonsteroidal anti-inflammatory drugs for animals.
13. While we will test whether there are overlaps in any other product categories, our initial investigation will focus on the 12 product categories identified by the Applicant.⁹ This will involve testing, among other issues:
- 13.1 the extent to which products with different active ingredients (or combination of active ingredients) are substitutes for each other (ie, do the products have the same therapeutic use?);
 - 13.2 whether there are separate markets for products with the same therapeutic use but that can only be administered to particular animals (ie, some products may only be indicated to treat dogs); and

⁷ Clearance application from Zoetis (28 October 2021) at [58].

⁸ Endoparasiticides are used for the treatment of internal parasites such as roundworms, tapeworms and flukes while endectocides are able to treat both internal, and certain types of external, parasites.

⁹ While Jurox develops and manufactures its products overseas and then imports them into New Zealand for supply, Zoetis (as well as some other suppliers) manufactures certain products in New Zealand. At this stage, it appears likely that the geographic and functional dimensions are likely to be the national market for the manufacture/importation and wholesale supply for any relevant product.

- 13.3 whether there are separate markets for products with the same therapeutic use on the same animal(s) but that can only be administered in a particular way (ie, can the product be administered with an injection or a tablet or both?).

Without the acquisition

14. We will consider what the merging parties would do if the Proposed Acquisition does not proceed. We will consider the evidence on whether the without-the-acquisition scenario is best characterised by the status quo or whether there are other likely counterfactual scenarios.
15. We will consider whether absent the Proposed Acquisition either of the merging parties would be likely to launch any new products that would compete with a product of the other merging party.

Preliminary issues

16. We will investigate whether the Proposed Acquisition would be likely to substantially lessen competition in the relevant markets via unilateral effects. We will assess whether the loss of competition between Zoetis and Jurox would enable the merged firm to profitably raise prices or reduce quality or innovation.
17. In markets where products differ slightly from one another (known as a 'differentiated market'), some products will be closer substitutes and compete more vigorously with each other than others. Unilateral effects are therefore more likely to arise when the products produced by Zoetis and Jurox are relatively similar.
18. The Applicant considers that the Proposed Acquisition would not be likely to substantially lessen competition in any New Zealand market via unilateral effects. It submits that:¹⁰
- 18.1 Zoetis' and Jurox's product portfolios are largely complementary, meaning that there is limited competitive overlap between the two parties; and
- 18.2 in areas where their products do compete, Zoetis and Jurox are not close competitors and the merged entity would be constrained by the presence of many well-established competitors in New Zealand.
19. To assess whether the merged firm will be able to profitably raise prices, or reduce quality or innovation post-merger, we will consider, for each area of competitive overlap:
- 19.1 closeness of competition: the degree of existing and potential competitive constraint that Zoetis and Jurox impose upon one another. To the extent that any constraint is material, we will assess whether the competition lost between the merging parties would be replaced by rival competitors;

¹⁰ Clearance application from Zoetis (28 October 2021) at [10].

- 19.2 remaining competitive constraints: the degree of constraint that other existing competitors would impose on the merged entity; and
 - 19.3 entry and expansion: how easily rivals could enter and/or expand in response to an increase in price or reduction in quality or innovation by the merged entity.
20. We will also test whether the Proposed Acquisition could increase the potential for coordinated effects and/or give rise to conglomerate effects.
- 20.1 A transaction can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour. We will assess whether any of the relevant markets are vulnerable to coordination, and whether the Proposed Acquisition would change conditions so that coordination is more likely, more complete, or more sustainable.
 - 20.2 A conglomerate merger is a merger between firms that supply products that may relate to each other (for example, complementary products). Conglomerate effects occur when a merged firm gains the ability and incentive to foreclose competitors by using anticompetitive strategies that leverage its position in some of its products (particularly 'must-have' products), such as anticompetitive tying or bundling strategies. We will assess whether the Proposed Acquisition would give the merged entity the ability and incentive to bundle or tie its products anticompetitively.

Next steps in our investigation

- 21. The Commission is currently scheduled to make a decision on whether or not to give clearance to the Proposed Acquisition by **23 December 2021**. However, this date may change as our investigation progresses.¹¹ In particular, if we need to test and consider the issues identified above further, the decision date is likely to extend.
- 22. As part of our investigation, we will be identifying and contacting parties that we consider will be able to help us assess the preliminary issues identified above.

Making a submission

- 23. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference 'Zoetis/Jurox' in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **26 November 2021**.

¹¹ The Commission maintains a clearance register on our website at <http://www.comcom.govt.nz/clearances-register/> where we update any changes to our deadlines and provide relevant documents.

24. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission's website.
25. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example, in circumstances where disclosure would unreasonably prejudice the supplier or subject of the information.