

COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

Date: 3 April 2003

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.

PART I: TRANSACTION DETAILS

TO BE COMPLETED BY ALL APPLICANTS

1 What is the business acquisition for which **clearance** is sought?

To enable Procter & Gamble Distributing New Zealand ("PGDNZ") to acquire the assets and stock of Wella New Zealand Limited ("Wella NZ") as part of the global acquisition by The Procter & Gamble Company ("P&G") of the business of Wella Aktiengesellschaft ("Wella AG").

1.1 Identify **what** is to be acquired and **who** is to acquire it.

PGDNZ will acquire the assets and stock of Wella NZ.

1.2 Attach a copy of any contract or agreement relating to the proposed acquisition.

There is no agreement for the New Zealand acquisition at this time. The only agreement which exists relates to the purchase by P&G of the shares in Wella AG. That agreement was negotiated in Basel, Switzerland.

1.3 Any notice of clearance will be given only in terms of the above description and, accordingly, will cover only:

- the acquisition of the shares/assets specified under this paragraph of the notice
- the acquisition of those shares/assets by the person identified in this paragraph as the person who proposes to make the acquisition.

The Person Giving Notice

2 Who is the person giving this notice?

2.1 State name (including both the name of the company and the name/position of the individual responsible for the notice), postal address, telephone and facsimile numbers.

Denham Shale as solicitor for PGDNZ is giving this notice. My postal address is PO Box 91175, Auckland Mail Centre, telephone (09) 374 1303 and facsimile (09) 374 1304.

2.2 Section 66(1) provides that “A person who proposes to acquire assets of a business or shares may give ... notice ...” If a notice is given by an agent (eg a solicitor) on behalf of the acquirer then you must also give contact details of the acquirer.

The person who may be contacted within the acquirer’s company is Mr Nimalan Rutnam, General Counsel, Procter & Gamble Australia Pty Limited, 320 Victoria Road, Rydalmere, New South Wales 2116, Australia, telephone 0061 2 9684 8383, facsimile 0061 2 9684 8460 who is also responsible as General Counsel for PGDNZ.

Confidentiality

3 Do you wish to request a confidentiality order for:

3.1 The fact of the proposed acquisition?

No.

3.1.1 If so, for how long?

3.1.2 Why?

3.2 Specific information contained in or attached to the notice?

Yes.

3.2.1 If so, for how long?

Until a contract has been signed by PGDNZ and/or has become unconditional.

3.2.2 Why?

The acquirer wishes to protect details of the proposed transaction which are commercially sensitive. The details required to be protected are those in paragraphs 15.2 and 16 relating to market shares. Otherwise PGDNZ could be compromised through details of these market shares becoming known to third parties.

3.3 The Commission has power to make an order prohibiting the publication or communication of any information or documents received by it for **up to 20 working days after determination of the matter**. See s100 for details.

The acquirer has no objection to the fact of the Commission having made a decision regarding clearance being made public.

- 3.4 See also the Official Information Act 1982, and the Commission's brochure on confidentiality.
- 3.5 It would be helpful if you could frame the request in terms of the Official Information Act's criteria for withholding information and provide supporting reasons/information.
- 3.6 On one copy of the notice submitted to the Commission please indicate clearly (eg by underlining or highlighting in a way that photocopies legibly) the **specific information** for which confidentiality is sought. The Commission will not grant "blanket orders" over the entire contents of all or part of the notice simply on the basis that it contains some specific confidential information.

Details of the Participants

- 4 Who are the participants (ie the parties involved)?

P&G is a stock corporation under the laws of the US State of Ohio, which has made an offer for the shares in Wella AG. I am not certain as to whether this will lead to PGDNZ acquiring the business of Wella NZ in due course but certainly PGDNZ will, subject to the outcome of this application, become the distributor of the hair care products of both the P&G Group and Wella in New Zealand after the acquisition.

- 4.1 For the purposes of this notice the term "participant" means:

- the person who proposes to acquire assets or shares ("the acquirer");
- where assets of a business are being acquired, the owner of the business;
- where shares are being acquired, the company in which shares are to be acquired ("the target company");
- any person who owns over 10% of the shares in the target company.

and will continue to do so after the acquisition.

The participants, for purposes of this application, are PGDNZ and Wella NZ which is the holder of the assets to be acquired in New Zealand. It is a wholly owned subsidiary of Wella AG.

- 4.2 Give name, postal address, name of contact person(s) and telephone and facsimile numbers of each participant.

See paragraph 2.2 for PGDNZ. There is no contact person for Wella NZ.

- 5 Who is interconnected to or associated with each participant?

- 5.1 Acquirer group/associates:

P&G is the parent of the Procter & Gamble Group globally. I have no idea of all the global subsidiaries in the group. The only companies interconnected to or associated with P&G in New Zealand are PGDNZ and Iams New Zealand Limited.

- 5.1.1 If the acquirer is a member of a group of interconnected bodies corporate, identify all members of the group.

Not applicable.

- 5.1.2 Identify all companies in which the acquirer or its interconnected bodies corporate own 10% or more of the shares.

Not applicable.

- 5.1.3 Identify any company which owns over 10% of the shares in the acquirer or any company of which the acquirer is a subsidiary.

Not applicable.

- 5.1.4 Identify all interconnected bodies corporate of any company identified under 5.1.3 and all companies in which it, or its interconnected bodies corporate, own over 10% of the shares.

Not applicable.

- 5.2 Target company group/associates

The only subsidiary of Wella AG in New Zealand of which I am aware is Wella NZ.

- 5.2.1 Identify all subsidiaries of the target company and all companies in which the target company or any subsidiary owns 10% or more of the shares.

Not applicable.

- 5.2.2 If any company owns over 10% of the shares in the “target company”, and will continue to do so **after** the proposed acquisition, then identify all of the interconnected bodies corporate of that company **and** all companies in which it or its interconnected bodies corporate own over 10% of the shares.

Not applicable.

- 5.3 For the purposes of questions 5.1.1 - 5.1.4, and 5.2.2, any entity other than a company should be regarded as if it were a company - with the appropriate modifications. For example, an unincorporated joint venture which is owned 50/50 by two persons is regarded as a company with each person holding 50% of the shares.

- 5.4 The terms “interconnected” and “associated” are defined in ss2(7) and 47(3) of the Act. This paragraph of the Notice aims to identify persons interconnected/associated with the participants by way of ownership connections. Paragraphs 7 and 8 are aimed at identifying other associates by way of “cross directorships” and “arrangements” between persons in the relevant markets.

- 5.5 When answering these questions, bear in mind that the Commission is only seeking information that is relevant to the proposal. The Commission does not require exhaustive details of the persons interconnected to, or associated with, the acquirer or target unless those interconnections or associations are relevant to the Commission’s consideration of the competition implications of the proposal.

Example

The acquirer is a member of a group of companies. The parent company of the group has three direct subsidiaries - A, B, and C. Each of those subsidiaries has a number of subsidiaries involved in a particular market or related markets. (For example A is the holding company for a number of subsidiaries each of which owns a retail outlet). The acquisition involves assets of businesses involved in the same markets as C. It is sufficient to 'identify all interconnected bodies corporate' of the acquirer (para 5.1.1) as being: the 'ultimate parent'; 'A and its subsidiaries'; 'B and its subsidiaries'; 'C', 'relevant operating subsidiaries of "C" '; and other 'subsidiaries of C'.

- 6 Does any participant, or any interconnected body corporate thereof, already have a beneficial interest in, or is it beneficially entitled to, any shares or other pecuniary interest in another participant?

No participant or any interconnected body corporate already has a beneficial interest in, or is beneficially entitled to, any shares or other pecuniary interest in another participant other than would have arisen from P&G's offer to acquire the shares in Wella AG which has given rise to this application.

6.1 If yes, please identify the number, description and amount.

6.2 See s2(7) for definition of interconnected bodies corporate.

- 7 Identify any links, formal or informal, between any participant/s including interconnected bodies corporate and other persons identified at paragraph 5 and its/their existing competitors in each market.

Example

Beneficial interests other than shares; common directorships; formal or informal contracts, arrangements or undertakings relating, for example, to prices, terms, and conditions of sale, territorial allocations, product or service distribution/production, or use of technology.

Not applicable.

- 8 Do any directors of the 'acquirer' also hold directorships in any other companies which are involved in the markets in which the target company/business operates?

No directors of PGDNZ hold directorships in any other companies involved in the markets in which Wella NZ operates.

8.1 Please provide details of:

- directors' names;
- the other companies;

- the markets involved.

9 What are the business activities of each participant?

PGDNZ has the following business activities in New Zealand – hair care products and colourants, deodorants, after shave, moisturizers, cough/cold remedies, laxatives, feminine sanitary protection products, Pringles (chips) and fabric freshener.

Iams New Zealand Limited, which is interconnected with PGDNZ through having the same parent company, is a manufacturer of pet foods.

9.1 Please include a **summary** of **all** the business activities of each participant **including all interconnected bodies corporate thereof and any other business identified in question 5**. (Note the comments on relevancy in paragraph 5 above. It is sufficient to refer in general terms to activities in which there will be no aggregation.)

10 What are the reasons for the proposal and the intentions in respect of the acquired or merged business?

The reason for the proposal is that P&G has made an offer for 100% of the shares in Wella AG. It is not known whether PGDNZ is going to acquire the shares in Wella NZ or whether the two companies will carry on individual activities but in common ownership. It is known however that as a result of P&G taking over Wella AG the distribution of products by PGDNZ and Wella NZ will come under the same control.

PART II: IDENTIFICATION OF MARKETS AFFECTED

Explanatory note

See s3(1) for definition of market. Note that markets are characterised by the products involved (ie goods or service), the functional level (eg manufacturing, wholesaling or retailing), the geographical area and, in some cases, the relevant timeframe. These concepts are elaborated in the Commission's "Practice Note 4".

Horizontal Aggregation

11 Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?

Yes.

11.1 Are there any markets in which the acquirer (and/or any interconnected or associated company as identified in question 5.1.1 - 5.1.4), **and**

- the business to which the assets relate, or
- the 'target company' (and/or any interconnected or associated company identified in question 5.2.1 and 5.2.2 above)

are both engaged?

The markets in which PGDNZ and Wella NZ are both engaged are – hair care products and colourants, cosmetics and fragrances.

11.2 Please identify for each market:

- the product(s), functional level, geographical area and (where relevant) timeframe;
- the specific parties involved;
- the relationship of those parties to the acquirer or the target company as the case may be.

In the hair care market throughout New Zealand PGDNZ sells its products through grocery outlets (principally supermarkets), pharmacies and to a very minor extent (between 1 – 3%) department stores. Insofar as shampoo and conditioner is concerned PGDNZ's market share in grocery outlets and pharmacies was 35.9% for the year until 31 December 2002. For the same period its share of sales of hair styling and hair sprays was 9.6%. In hair colourants PGDNZ obtained sales of 24.9%. For its cosmetics and fragrances PGDNZ estimates its sales would not reach 15% of market share.

Differentiated Product Markets

Explanatory Note

In differentiated products markets, the products of firms are by definition not perfect substitutes for each other. The substitutability between products will vary depending upon differences in their various characteristics, which may include their physical specifications, brand image, associated services and location of sale. Buyers will choose between products on the basis of these characteristics as well as price. In simple terms, differentiated products can be thought of as being arranged in a "chain of substitutes", where those in adjacent positions in the chain tend to be close substitutes, and those positioned further apart are less close substitutes.

- 12 Please indicate whether the products in each market identified in question 11 are standardised (buyers make their purchases largely on the basis of price) or differentiated (buyers make their purchases largely on the basis of product characteristics as well as price).

The products in each market identified in question 11 are differentiated.

- 13 For differentiated product markets:

- 13.1 Please indicate the principle characteristics of products that cause them to be differentiated one from another.

Differentiation occurs depending on the type of hair (oily, smooth) the consumer has and the attributes of the product which affect the different types of hair and perhaps size of packaging.

- 13.2 To what extent does product differentiation lead firms to tailor and market their products to particular buyer groups or market niches?

I do not know.

- 13.3 Of the various products in the market, which are close substitutes for the products of the proposed combined entity? – which are more distant substitutes?

Not known.

- 13.4 Given the level of product differentiation, to what extent do you consider that the merged entity would be constrained in its actions by the presence of other suppliers in the market(s) affected?

N/A

The Commission would be assisted in its analysis of the effects of the proposed transaction in a differentiated product market by evidence on product substitutability derived from marketing or consumer surveys, comparative product analyses and evidence of the effect of relative price changes on the demand for different products.

Vertical Integration

Explanatory Note

Economic arrangements between businesses in a supplier-customer relationship are termed 'vertical'. Vertical links are links that exist between firms operating at different functional levels (eg manufacturing, wholesaling or retailing). Vertical links may take the form of long-term supply contracts, customer and territorial restraints, tying arrangements, exclusive dealing etc.

Where the supplier of a product or service acquires control of a customer or a potential customer for the product or service, or where the customer for a product or service acquires control of a supplier or potential supplier of that product or service, "vertical integration" is said to take place. Usually vertical integration involves a firm integrating forward to the next, or backward to the previous, functional level. However, it could involve acquisition or control of any upstream or downstream market participant.

- 14 Will the proposal result in vertical integration between firms involved at different functional levels?

No vertical integration will result from the acquisition.

- 14.1 Are the "acquirer" (or any interconnected or associated company as identified in questions 5.1.1 -5.1.4) and:

- the business to which the assets relate, or
- the 'target company' (or any interconnected or associated company as identified in question 5.2.1 and 5.2.2)

engaged at different functional levels of the same product market(s)?

- 14.2 Please identify for each market:

- 14.2.1 product(s), functional level(s), geographic area(s) and (where relevant) timeframes;
- 14.2.2 the specific parties involved;
- 14.2.3 the relationship of those persons to the 'acquirer' or 'the target company' as the case may be.
- 14.3 If so, in all subsequent questions about markets affected by the proposal, please give details of both (or all) the downstream/upstream markets concerned; and details of existing vertical links between the participants (and/or interconnected or associated companies) in each of these markets, eg supply agreements, long-term supply contracts.
- 15 In respect of each market identified in questions 11 and/or 14 identify briefly:
- 15.1 All proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) notified to the Commission in the last three years and, in each case,
- 15.1.1 the outcome of the notification (eg cleared, authorised, declined, withdrawn)
- 15.1.2 whether the proposed acquisition has occurred.
- The most recent application of which I am aware involving either participant was the acquisition by P&G of Tambrands Inc in respect of which a clearance was given by the Commission on 28 May 1997 (Decision No. 295) That acquisition took place. No application has been made by a member of the P&G group during the past three years. I have no knowledge of whether Wella NZ has been involved in any application to the Commission in the past three years.*
- 15.2 Any other acquisition of assets of a business or shares which either participant (or any interconnected body corporate) has undertaken in the last three years.
- During the past three years the P&G group has been involved in the acquisition of Clairol which related to products in the three markets referred to in this application adding approximately the following share proportions to the then existing P&G share in New Zealand – shampoos/conditioners [] and styling []%. P&G had no colourants market before acquiring Clairol. The functional market is wholesaling and the geographic outlet is New Zealand.*
- See question 4.1 above for definition of participant. Please cite Commission references where possible.

PLEASE ANSWER QUESTIONS 16 - 26 BELOW IN RESPECT OF EACH MARKET IDENTIFIED IN QUESTIONS 11 AND 14

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

Existing Competitors

- 16 In the market or markets, who are the suppliers of competing products, including imports?

Shampoo/Conditioner Market

PGDNZ

Unilever

Alberto Culver

Wella NZ

Colgate Palmolive

Schwarzkopf

Hair Styling/Hair Sprays

Wella NZ

Unilever

Alberto Culver

Schwarzkopf

PGDNZ

Helena Products

Hair Colourants

PGDNZ

Schwarzkopf

L'Oreal

Wella NZ

Insofar as cosmetics and fragrances are concerned the market share held by PGDNZ is said not to exceed 15% and so is not considered to be relevant.

The above figures were obtained from A C Nielsen and IMS Health New Zealand Limited.

- 16.1 Please identify the owners of those suppliers (including ultimate owner/s).
- 16.2 What are their estimated market shares, both in terms of productive capacity and of sales?
- give the total size of the domestic market;
 - identify at least the four leading suppliers;
 - include participants to the proposal;
 - identify imports clearly (including the country of origin and the importers);
 - identify source(s) of estimates; and
 - note that competing goods may not be confined to identical or branded goods.

Shampoo/Conditioner Market

Rank	Supplier	Owner(s) of Supplier	Estimated % of Productive Capacity	Estimated % of Market Sales
1	PGDNZ	P&G	N/A	[]
2	Unilever	Unilever Overseas Holdings BV		[]
3	Alberto Culver	Alberto Culver Canada Inc		[]
4	Wella NZ	Wella AG		[]
5	Colgate Palmolive	Colgate-Palmolive Co		[]
6	Schwarzkopf			[]

Hair Styling/Hair Sprays Market

Rank	Supplier	Owner(s) of Supplier	Estimated % of Productive Capacity	Estimated % of Market Sales
1	Wella NZ	Wella AG	N/A	[]
2	Unilever	Unilever Overseas Holdings BV		[]
3	Alberto Culver	Alberto Culver Canada Inc		[]
4	Schwarzkopf			[]
5	PGDNZ	P&G		[]
6	Helena Products			[]

Hair Colourants Market

Rank	Supplier	Owner(s) of Supplier	Estimated % of Productive Capacity	Estimated % of Market Sales
1	PGDNZ	P&G	N/A	[]
2	Schwarzkopf			[]
3	L'Oreal	L'Oreal SA		[]
4	Wella NZ	Wella AG		[]

Sources of Estimates:

- 16.3 Please indicate the source of the data provided, and where they are estimates, the likely degree of accuracy.
- 16.4 Where available, please provide data in the form of the table above for any or each of the past five years, as well as for the most recent year.

Other Considerations

- 16.5 Please identify any firms that are not currently producing the product in the market, but could enter the market quickly (using essentially their existing productive capacity) in response to an attempt by suppliers to raise prices or reduce output or quality ('near entrants').

All of the market participants are either owned by overseas companies or are distributing their products on behalf of overseas principals. I am not aware of any firms who could enter the market quickly in response to an attempt by suppliers to raise prices or reduce output or quality.

- 16.6 Estimate the productive capacity that such near entrants potentially could bring to the market.
- 16.7 Please indicate the extent to which imports provide a constraint on domestic suppliers. What costs are incurred by importers that are not incurred by domestic suppliers? How sensitive is the domestic price of imports to changes in the New Zealand dollar exchange rate?

Imports do not constrain domestic supply.

- 16.8 To what extent is the product exported?

Not at all to my knowledge.

- 16.9 Please indicate whether the 'target company' could be described as a vigorous and effective competitor, taking into account its pricing behaviour, its record of innovation, its growth rate relative to the market, and its history of independent behaviour.

I would not describe Wella NZ as vigorous but obviously it has been effective in acquiring and holding market share.

Conditions of Expansion

17 The following listing gives different types of market conditions that may effect the ability of existing firms to expand:

- *Frontier entry conditions*
eg tariffs, quarantine requirements, international freight costs.
- *Legislative/regulatory conditions*
eg meat licensing, Resource Management Act requirements, health and safety standards.
- *Industrial/business*
eg access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs (ie irrecoverable or exit costs), influence of branding and sales promotion, technical specifications.
- *Other*
eg responses to expansion by major firms; lack of additional productive capacity; additional productive capacity has a relatively high cost.

Which, if any, of the conditions identified above do you consider would be likely to act as a barrier to the expansion of existing competitors, where they have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

There are no barriers to expansion.

Please provide evidence, where available, of expansion by existing competitors in the relevant markets during the past five years.

Not known.

18 Please name any business which already supplies the market – including overseas firms - which you consider could increase supply of the product concerned in the geographic market by any of the following means:

- diverting production into the market (eg from exports)
- increasing utilisation of existing capacity
- expansion of existing capacity.

Specify in each case which of the above three points applies.

Not known.

19 Of the conditions of expansion listed above, which do you consider would influence the business decision in each case to increase supply?

20 How long would you expect it to take for supply to increase in each case?

21 In your opinion, to what extent would the possible competitive response of existing suppliers constrain the merged entity?

22 Looked at overall, and bearing in mind the increase in market concentration that would be brought about by the acquisition, to what extent do you consider that the

merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?

Coordinated Market Power

Explanatory Note

A merger or acquisition can result in a substantial lessening of competition in the market where it enhances 'coordination effects', such that the remaining firms are more easily able to form and maintain collusive arrangements (whether tacit or explicit) through which market power can be exerted. The market characteristics that may facilitate or impede coordination effects are listed in the Commission's Practice Note 4.

- 23 Identify the various characteristics of the market that, post-acquisition, you consider would either facilitate or impede coordination effects.

There would be no characteristics to facilitate or impede co-ordination effects other than normal commercial opportunities.

- 24 Identify the various characteristics of the market that, post-acquisition, you consider would facilitate or impede the monitoring and enforcement of coordinated behaviour by market participants.

None.

- 25 Indicate whether the markets identified in paragraph 9 above show any evidence of price coordination, price matching or price following by market participants.

There is ongoing price competition.

- 26 Please state the reasons why, in your opinion, the transaction will not increase the risk of coordinated behaviour in the relevant market(s).

Because each of the leading market players referred to above are international and compete globally which will continue. They each control their own brands globally.

NOTE: If you believe that the constraint imposed by the conduct of existing competitors would be sufficient to ensure that competition would not be substantially lessened in any market, you may choose not to answer any further questions at this stage. However, the Commission may require written answers to any further questions it considers necessary to ask (see s68(1)). Otherwise, applicants should answer the further questions below.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

PLEASE ANSWER QUESTIONS 27-41 BELOW IN RESPECT OF EACH MARKET IDENTIFIED IN QUESTIONS 11 AND 14

Conditions of Entry

27 The following listing gives different types of market conditions that may affect the ability of new firms to enter the market:

- *Frontier entry conditions*
eg tariffs, quarantine requirements, international freight costs.
- *Legislative/regulatory conditions*
eg entry licensing, Resource Management Act requirements, health and safety standards.
- *Industrial/business conditions*
eg access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs (ie irrecoverable or exit costs), influence of branding and sales promotion, technical specifications.
- *Other conditions*
eg responses to expansion by major firms.

Which, if any, of the conditions identified above do you consider would be likely to act as a barrier to the entry of new competitors, where they otherwise would have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

There are no barriers to entry.

Explanatory Note

'New entry' differs from 'near entry' in that substantial new investment, often involving significant sunk costs, in both tangible and intangible assets, and over a longer time scale, is typically required.

28 Please name any businesses (including overseas businesses) which do not currently supply the market but which you consider could supply the relevant market(s) by:

- investing in new production facilities to produce the product;
- overseas companies diverting production to New Zealand;
- domestic companies expanding, or changing the utilisation of, existing capacity to produce the relevant products (where this would involve substantial new investment)

Specify for each named business which of the above three might apply.

None because virtually all of the products in the subject markets are imported.

- 29 What conditions of entry do you consider would most influence the business decisions to enter in each case?

Not known.

Likelihood, Sufficiency and Timeliness of Entry

- 30 How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential business entrants named above?

N/A

- 31 Given the assessed entry conditions, and the costs that these might impose upon an entrant, is it likely that a potential entrant would consider entry profitable at pre-acquisition prices?

- 32 Would the threat of entry be at a level and spread of sales that it is likely to cause market participants to react in a significant manner?

- 33 What conditions of entry do you consider would influence the business decision to enter the market by setting up from scratch, ie *de novo* entry?

- 34 How long would you expect it to take for *de novo* entry to occur?

- 35 In your opinion, to what extent would the possibility of *de novo* entry constrain the merged entity?

PART V: OTHER POTENTIAL CONSTRAINTS

Constraints on Market Power by the Conduct of Suppliers

- 36 Who would be the suppliers of goods or services to the merged entity in each market identified in questions 11 and/or 14?

Members of the P&G Group globally.

- 37 Who owns them?

P&G

- 38 In your opinion, to what extent would the conduct of suppliers of goods or services to the merged entity constrain the merged entity in each relevant market?

Not at all.

Constraints on Market Power by the Conduct of Acquirers

- 39 Who would be the acquirers of goods or services supplied by the merged entity in each of the markets identified in questions 11 and/or 14?

Grocery outlets, pharmacies, department stores and hair salons throughout New Zealand.

- 40 Who owns them (where appropriate)? Please list as follows:

N/A

Relevant Market	Acquirer	Owner(s) of the Acquirer
1.		
2.		
Etc		

- 41 In your opinion to what extent would the conduct of acquirers of goods or services to the merged entity constrain the merged entity in each affected market? How would this happen?

Not at all.

THIS APPLICATION is made by Nimalan Rutnam, General Counsel to PGDNZ

I hereby confirm that:

- * all information specified by the Commission has been supplied;
- * all information known to the applicant which is relevant to the consideration of this application has been supplied;
- * all information supplied is correct as at the date of this application.

I undertake to advise the Commission immediately of any material change in circumstances relating to the application.

Dated this 12th day of May 2003.

Signed by
Procter & Gamble Distributing New Zealand

General Counsel

I am an officer of the company and am duly authorised to make this application.

Please Note

- this declaration is to be made only by the applicant. It may not be made by a solicitor or other adviser acting on the applicant's behalf.
- the wording in this declaration may not be varied by the applicant.
- if this declaration is not completed, the Commission may decline to register the notice/application.
- registration may be effected on receipt of a facsimile copy of a completed application or notice together with the confirmation of deposit of the appropriate fee to the Commission's account. The original documentation must be forwarded to the Registrar, Business Acquisitions & Authorisations, Wellington, within 3 working days of registration. For account details, contact the Accountant (04) 498 0926 or the Manager, Corporate Services (04) 498 0921.