

4 June 2004

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

Pursuant to section 66(1) of the Commerce Act 1986, notice is hereby given seeking **clearance** of a proposed business acquisition.

#### **REGISTRATION DETAILS**

Registration Number/Date	Transferee/Transferor	File Number
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## PART I: TRANSACTION DETAILS

### 1. Business acquisition for which clearance is sought

1.1 The acquisition for which clearance is sought is a proposal by Colgate-Palmolive Company (**CPC**), Colgate-Palmolive Pty Limited (**CPA**), and Colgate-Palmolive Limited (**CPNZ**), to acquire various brands and associated items that comprise the laundry additive, laundry detergent, and dishwashing detergent businesses of Campbell Brothers Limited and Campbell Brothers' wholly owned subsidiary, Bushland Products Pty Limited (together, **Campbell Brothers**). The brands in respect of which this application is made are:

1.1.1 the "Fluffy" brand for:

- fabric softener;
- wool wash;
- tumble dryer pads; and

1.1.2 the "Hurricane" brand for:

- laundry detergent (powder and liquid); and
- dishwashing liquid; and

1.1.3 the "Castle" brand for:

- laundry detergent; and
- dishwashing liquid; and

1.1.4 the "Love 'n Care" brand for laundry detergent.

(collectively, **the brands**)

1.2 A sale and purchase agreement has been executed, but is conditional upon clearance being granted by the Commerce Commission.

1.3 Under the agreement:

1.3.1 CPC (based in the United States) will acquire the trade marks, copyright, brands, trade dress, and brand goodwill associated with each of the brands; and

1.3.2 CPA (registered in Australia) will buy the business information, bottle moulds, copyright works, know-how, records, business goodwill, plant and equipment, customer lists, and printer plates associated with the brands; and

1.3.3 CPNZ (registered in New Zealand) will acquire the existing New Zealand stock of the relevant brands.

- 1.4 The 3 Colgate companies specified above are collectively referred to as **Colgate** in this application.
- 1.5 CPA and Campbell Brothers will also enter into manufacturing arrangements regarding the manufacture of the products to which the brands will be applied.
- 1.6 This application seeks clearance for the proposal.

## **PERSON GIVING NOTICE**

### **2. The person giving notice**

- 2.1 This notice is given by:

Colgate-Palmolive Pty Ltd  
345 George Street  
Sydney  
NSW 2001  
Australia

Attention: Robert Koltai  
Telephone: +61-2-9229 5607  
Facsimile: +61-2-9290 1641  
Email: Robert\_Koltai@colpal.com

- 2.2 Correspondence and inquiries should in the first instance be addressed to:

Buddle Findlay  
State Insurance Tower  
BNZ Centre  
1 Willis Street  
PO Box 2694  
Wellington

Attention: Susie Williams  
Telephone: +64-4-498 7356  
Facsimile: +64-4-462 0856  
Email: susie.williams@buddlefindlay.com

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## **CONFIDENTIALITY**

### **3. Requests for confidentiality**

- 3.1 Colgate does not request confidentiality for the fact of the proposed acquisition.
  - 3.2 Colgate does not request confidentiality for any of the information included in this application.
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## **DETAILS OF THE PARTICIPANTS**

### **4. The participants**

#### 4.1 The acquirer is:

- 4.1.1 in respect of the items described in paragraph 1.3.1, Colgate-Palmolive Company, 300 Park Avenue, New York, NY 10022, United States of America;
- 4.1.2 in respect of the items described in paragraph 1.3.2, Colgate-Palmolive Pty Limited, 345 George Street, Sydney, NSW 2001, Australia; and
- 4.1.3 in respect of the items described in paragraph 1.3.3, Colgate-Palmolive Limited, Nevis Street, Petone, New Zealand.

Contact details for Colgate are provided in paragraph 2.

#### 4.2 The owner of the target assets is Campbell Brothers Limited, 29 Finchley Street, Milton, Queensland, 4064, Australia.

#### 4.3 Correspondence and inquiries should in the first instance be addressed to:

Minter Ellison Rudd Watts  
PO Box 3798  
Auckland

Attention: Cathy Quinn  
Telephone: +64-9-353 9951  
Fax: +64-9-353 9701  
Email: [cathy.quinn@minterellison.co.nz](mailto:cathy.quinn@minterellison.co.nz)

### **5. Interconnected or associated parties**

#### 5.1 Colgate

- 5.1.1 Colgate-Palmolive Company is a US-based company with subsidiaries operating in North America, Latin America, Europe, Asia, Australasia and Africa.
- 5.1.2 Colgate-Palmolive Pty Limited is CPC's main subsidiary company in Australia.
- 5.1.3 Colgate-Palmolive Limited is CPC's only subsidiary in New Zealand. Colgate-Palmolive Limited is registered under the Companies Act 1993. Colgate-Palmolive Company owns 49,999 shares in Colgate-Palmolive Limited, and Norwood International, Inc owns 1 share. Norwood International is a US-based company.

#### 5.2 Campbell Brothers

- 5.2.1 Campbell Brothers Limited is registered under the Corporations Act 2001 in Australia.

5.2.2 Campbell Brothers has a diverse shareholding. No one shareholder owns more than 11% of the issued capital. The majority of shareholders are based in Australia.

5.2.3 Campbell Brothers is the parent company of the Campbell Brothers Group. Campbell Brothers is the ultimate owner of more than 10% of the shares of a number of companies registered in New Zealand. They are:

- Airtime Sales Limited;
- Bushland Products Pty Limited;
- Crossmark New Zealand Limited;
- Orion Export SARL Limited;
- Panamex Pacific Limited;
- Proclean Limited; and
- Roto-Rooter Limited (this company is in the process of being voluntarily wound up).

5.2.4 Bushland Products Pty Limited owns Orion Export Limited.

## **6. Participants' interests in each other**

6.1 Neither of the participants, and no interconnected body corporate of the participants, has a beneficial interest in, or is beneficially entitled to, any shares or other pecuniary interest in the other participants.

## **7. Links between participants**

7.1 Colgate and Campbell Consumer Products (Campbell Brothers' consumer products business unit) are members of the New Zealand Food and Grocery Council.

## **8. Directors**

8.1 No director of Colgate holds a directorship in any other company that is involved in the markets in which Campbell Brothers operate in New Zealand.

## **9. Business activities of each participant**

9.1 Colgate

9.1.1 Colgate is listed on the New York Stock Exchange, and is a leading global consumer products company. Colgate has five core business areas:

- oral care;
- personal care;
- household surface care;

- fabric care; and
- pet nutrition.

9.1.2 Colgate sells products in 200 countries and territories around the world, under a number of well-known brands such as Colgate, Palmolive, Mennen, Ajax, and Softsoap.

9.1.3 In New Zealand, Colgate manufactures and distributes household cleaning products, personal care products, and skincare products under a number of brands, including:

- Ajax;
- Cold Power;
- Colgate;
- Cuddly;
- Palmolive;
- Sard;
- Soft as Soap; and
- Softwash.

9.1.4 More information on the business of the Colgate-Palmolive group of companies may be obtained from Colgate's website: [www.colgate.com](http://www.colgate.com)

## 9.2 Campbell Brothers

9.2.1 Campbell Brothers is an Australian-based company listed on the Australian Stock Exchange, with Brisbane being its home exchange.

9.2.2 Campbell Brothers has 3 business units, namely:

- Laboratory Services;
- Consumer Products; and
- Industrial Products.

9.2.3 Campbell Consumer Products is the largest Australian-owned manufacturer of household laundry products. The Consumer Products business unit also provides home services such as carpet cleaning and pest control. The Consumer Products business unit manufactures and distributes a number of well-known brands, including Fluffy, Hurricane, Castle, Happy Nappy, More Soft, and Dots.

- 9.2.4 Campbell Consumer Products, through its manufacturing, purchasing, R&D, and operational skills, has become one of Australia's leading "private label" manufacturers.
- 9.2.5 Private label products are produced and sold to various entities in both Australia and New Zealand. These products are produced in compliance with private label specifications, including branding, packaging, and formulations.
- 9.2.6 More information on Campbell Brothers may be obtained from Campbell Brothers website: [www.campbell.com.au](http://www.campbell.com.au)

## **REASONS FOR THE PROPOSAL AND THE INTENTIONS IN RESPECT OF THE ACQUIRED BRANDS**

### **10. Colgate's reasons for acquiring and intentions in respect of the brands**

- 10.1 The acquisition of the brands will present Colgate with the opportunity to diversify its operations by enabling it to manufacture and distribute lower priced, value-based brands, and will complement Colgate's existing brands.

## PART II: IDENTIFICATION OF MARKETS AFFECTED

### HORIZONTAL AGGREGATION

#### 11. Markets in which there would be aggregation

11.1 Colgate considers that there are three markets relevant to the acquisition of the brands. They are:

- in respect of the “Fluffy” brand for fabric softener, wool wash, and tumble dryer pads, the market for laundry additives (“laundry additives market”);
- in relation to the “Hurricane”, “Castle”, and “Love ‘n Care” brands for laundry detergent, the market for laundry detergent (“laundry detergent market”); and
- in respect of the “Hurricane” and “Castle” brands for dishwashing liquid, the market for dishwashing liquid, excluding automatic dishwashing liquid, (“dishwashing liquid market”).

#### *Laundry additives market*

11.2 Colgate considers that there is a laundry additives market, comprising fabric softeners, fine fabric/wool wash, pre-wash products (including stain removers and soakers), liquid bleaches, laundry soap, ironing aids/starch, and nappy cleaners/sanitizers.

11.3 These items are all discretionary laundry products. They are used to complement or supplement regular laundry detergent. Brand loyalty is very low. If the price of a particular laundry additive increases, the most common response from consumers is to switch to another brand, or to cease to purchase that product altogether.

11.4 The products in this market range from “no-frills” varieties, for example Pam’s Active Powder (a laundry whitener and nappy treatment), to premium grade products such as Napisan.

11.5 The manufacturing capability required to produce products in this market is largely the same as those needed to produce, for example, laundry detergent, dishwashing detergent, liquid soap, and floor cleaning products.

11.6 Irrespective of the location of manufacturing plant (i.e., whether in New Zealand, Australia, or further afield) the products are manufactured to certain product specifications. This facilitates importation of the products because the product characteristics, such as weight, appearance, concentration, and odour are consistent regardless of where the product is manufactured. In addition, the costs of importing products manufactured overseas is low.



- 11.7 The functional level of the market is the manufacturing/importing level of the market. In contrast with overseas markets, in this market in New Zealand, manufacturers/importers generally sell directly to retailers, in essence acting as wholesalers as well, and accordingly there is not a distinct wholesale level of the market.
- 11.8 The geographic extent of the market is national, because comprehensive distribution systems exist and the products are readily transportable. Marketing is also generally undertaken on a national (sometimes even Australasian) basis.

*Laundry detergent market*

- 11.9 The laundry detergent market comprises all products for cleaning fabrics by hand or machine. The products may range in strength from low density powder (for example, Cold Power Laundry Powder Regular), to concentrate (Cold Power Ultra Laundry Powder Concentrate). The form of the product also varies – for example, powder, liquid, or soap.
- 11.10 There is a chain of substitutability within the market between the various strengths and forms of the product. For example, if the price of laundry soap increases, consumers will switch from laundry soap to laundry powder or liquid.
- 11.11 Advertising and promotion (whether by a manufacturer like Colgate, or a supermarket) is extremely important. In Colgate's experience, the laundry detergent market does not exhibit a high degree of brand loyalty. Demand is highly elastic, with significant swings in demand associated with price promotions. In fact, up to 80% of the sales of Colgate's products in this market occur when the relevant product is sold at a discount while being promoted.
- 11.12 In terms of manufacturing laundry detergent, the technology required is relatively basic and easily obtainable. As with the manufacturing of laundry additives, largely the same technology is used to manufacture dishwashing liquid, floor cleaning products, etc.
- 11.13 The functional level of the market is the manufacturing/importing level of the market. In contrast with overseas markets, in this market in New Zealand manufacturers/importers generally sell directly to retailers, and accordingly there is not a distinct wholesale level of the market.
- 11.14 The market for laundry detergent is a national one. Comprehensive distribution systems exist, and products are readily transportable from one location to another. Manufacturers tend to establish and implement manufacturing, distribution, and marketing strategies on a nationwide basis, including national advertising campaigns.

### *Dishwashing liquid market*

- 11.15 Colgate considers that the relevant market is the market for dishwashing liquid (excluding automatic dishwashing liquid).
- 11.16 In the dishwashing liquid market, there are a number of products that range from the “no frills” generic varieties and “private label” products (for example, Foodstuffs’ “Pams” and “Budget” labels) to well known brand names, such as Cussons Morning Fresh and Sunlight (a brand recently acquired by Pental from Unilever).
- 11.17 As with products in both the laundry additives and laundry detergents market, demand for products in the dishwashing liquid market is elastic, experiencing significant swings in demand depending on price promotion.
- 11.18 Private label products also have a significant presence in this market, holding 24% of the market measured by volume. Private label products generally compete on price. In this context, it is important to keep in mind that supermarkets themselves control private labels, and have complete discretion relating to when they choose to promote their own private label or another brand.
- 11.19 As with the laundry additive market and the laundry detergent market, the relevant functional level of the market is the manufacturing/importing level of the market.
- 11.20 The dishwashing liquid market is a national market for the same reasons that the laundry additives and laundry detergent products markets respectively are national, as discussed in paragraphs 11.8 and 11.14 above.

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## **DIFFERENTIATED PRODUCT MARKETS**

### **12. Differentiated or standardised product markets**

- 12.1 The products in each relevant market are characterised by some level of differentiation as discussed below.

### **13. Characteristics of differentiation**

#### *Laundry additives*

- 13.1 As discussed above, the laundry additives market comprises discretionary laundry products such as fabric softeners, stain removers, and pre-wash products. These products come in varying forms, for example, powder or liquid pre-wash products, liquid wool wash products that are added during the regular cycle, dryer pads for tumble dryers, and so on.

- 13.2 Accordingly, the products in this market may be differentiated by the form they take (liquid, powder, concentrate, etc), and when they are used in the laundry cycle (pre, during, or post wash).
- 13.3 The various laundry additives may also be differentiated to an extent by value (budget or premium).
- 13.4 However, for the reasons discussed in paragraphs 11.3 to 11.8, Colgate does not consider that the differentiation described above is sufficient to define separate markets within the laundry additives market.

*Laundry detergents*

- 13.5 Laundry detergents are differentiated by value (for example budget or premium) and features such as fragrance, formulation (for example, specifically for cold washes etc), the form they take and so on.
- 13.6 However, these characteristics are not sufficient to justify defining narrower markets. There is a high degree of substitutability between products with the varying features mentioned.

*Dishwashing liquids*

- 13.7 Dishwashing liquids are differentiated to an extent by value (for example budget or premium), but as already discussed, all brands experience sales uplift when on price promotion.
- 13.8 Dishwashing liquids are also differentiated by various product features, for example, lemon-scented, soft on hands etc.
- 13.9 However, Colgate does not consider that these features justify defining separate submarkets.

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**VERTICAL INTEGRATION**

**14. Will the proposal result in vertical integration between firms involved at different functional levels**

- 14.1 Neither Colgate nor Campbell Brothers are vertically integrated players in the relevant markets.
- 14.2 Colgate owns manufacturing facilities at Petone, but otherwise relies on contract manufacturing, both in New Zealand and abroad, for products that are distributed in New Zealand. Colgate does not have its own retail or wholesale outlets.

- 14.3 Campbell Brothers does not own any manufacturing facilities in New Zealand. Instead, it relies on its manufacturing facilities in Australia (both owned and contracted) and on contract manufacturing in New Zealand. Campbell Brothers does not have its own retail or wholesale outlets.
- 14.4 On the other hand, Colgate's major acquirers, supermarkets owned by Foodstuffs and Progressive, are vertically integrated, being both manufacturers (through contract manufacturing arrangements) and retailers of products in the relevant markets.

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## **PREVIOUS INVOLVEMENT IN ACQUISITIONS**

### **15. Involvement by Colgate and Campbell Brothers in acquisitions in past 3 years**

- 15.1 Colgate bought the "Soft as Soap" brand from Benckiser NV in 2001.
- 15.2 In 2002 Campbell Brothers, with its joint venture partner Crossmark Holdings Inc, acquired Superbroker and Airtime Sales, brokers and distributors in the retail grocery market in New Zealand.

**PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION**

**EXISTING COMPETITORS**

**16. Existing competitors**

*Laundry additives*

16.1 Laundry additives market shares by value:

<b>Entity</b>	<b>Products</b>	<b>Share</b>
Reckitt Benckiser	<ul style="list-style-type: none"> <li>• Napisan</li> <li>• Frend</li> </ul>	44.3%
Colgate	<ul style="list-style-type: none"> <li>• Sard</li> <li>• Kindness</li> <li>• Cuddly</li> </ul>	14.6%
Sara Lee	<ul style="list-style-type: none"> <li>• Woolmix</li> <li>• Janola</li> <li>• Hi-speed</li> </ul>	12.6%
Campbell Brothers	<ul style="list-style-type: none"> <li>• Fluffy</li> <li>• Happy Nappy</li> </ul>	8.2%
Unilever	<ul style="list-style-type: none"> <li>• Lux</li> <li>• Softly</li> <li>• Comfort</li> <li>• Sunlight</li> </ul>	8.1%
Private Labels		6.9%
Other		5.3%
<b>Total</b>		<b>100%</b>

16.2 Laundry additives market shares by volume:

<b>Entity</b>	<b>Share</b>
Reckitt Benckiser	26.9%
Sara Lee	18.5%
Colgate	17.5%
Private Labels	11.4%
Campbell Brothers	10.8%

Unilever	7.6%
Other	7.3%
<b>Total</b>	<b>100%</b>

*Laundry detergent market*

16.3 Laundry detergent market shares by value:

Entity	Products	Share
Colgate	<ul style="list-style-type: none"> <li>• Sard</li> <li>• Dynamo</li> <li>• Cold Power</li> <li>• Fab</li> </ul>	36.4%
Unilever	<ul style="list-style-type: none"> <li>• Surf</li> <li>• Sunlight (laundry soap)</li> <li>• Drive</li> <li>• Persil</li> </ul>	50.8%
PZ Cussons	<ul style="list-style-type: none"> <li>• Reflect</li> <li>• Preservene</li> </ul>	4.9%
Campbell Brothers	<ul style="list-style-type: none"> <li>• Hurricane</li> <li>• Castle</li> </ul>	3.3%
Other		4.6%
<b>Total</b>		<b>100%</b>

16.4 Laundry detergent shares by volume:

Entity	Share
Colgate	42.2%
Unilever	42%
Cussons	5.0%
Campbell Brothers	4.4%
Other	6.2%
<b>Total</b>	<b>100%</b>

*Dishwashing liquid market*

16.5 Dishwashing liquid market shares by value:

Entity	Products	Share
Colgate	• Palmolive	38%
Unilever (now Pental)	• Sunlight	23%
PZ Cussons	• Morning Fresh	13.3%
Private Labels		13.0%
Reckitt Benckiser	• Down to Earth	6.7%
Campbell Brothers	• Hurricane	1.2%
Other		4.8%
<b>Total</b>		<b>100%</b>

16.6 Dishwashing liquid market shares by volume:

Entity	Share
Colgate	29.4%
Private Labels	24.7%
Unilever (now Pental)	18.5%
PZ Cussons	8.3%
Reckitt Benckiser	6.2%
Campbell Brothers	1.4%
Other	11.5%
<b>Total</b>	<b>100%</b>

16.7 Market shares are sourced from ACNielsen and relate to the 2003 calendar year.

16.8 Since these figures were produced, Unilever has sold its Sunlight brand for dishwashing liquid and laundry soap to Pental Products Pty Ltd (**Pental**), a wholly-owned subsidiary of Symex Holdings Limited, an Australian-based listed company.

*Extent of aggregation*

16.9 In relation to the laundry additives market, the proposed acquisition falls just outside the state harbours.

16.10 In relation to the laundry detergent market, although market shares are relatively high, the level of aggregation resulting from this acquisition in this market is small (in the order of 4%).

16.11 The aggregation that would occur in the dishwashing liquid market as a result of Colgate acquiring the “Hurricane” brand for dishwashing liquid is miniscule (in the order of 1.4%). Clearly, such a de minimus aggregation could not substantially lessen competition. Accordingly, the remainder of this application does not address this market further.

*Near entrants*

16.12 PZ Cussons is a current manufacturer of dishwashing liquid and could swiftly redeploy capacity to enter the laundry additives market. As already discussed in paragraph 11, the technology used to produce laundry additives is largely the same as for other laundry products.

16.13 Procter & Gamble is also a near entrant. Procter & Gamble is a global player with two of the world’s strongest brands in “Tide” and “Ariel” laundry products.

16.14 Procter & Gamble manufactures and distributes laundry detergent and laundry additives overseas. In 2002, Procter & Gamble’s laundry product sales alone exceeded USD10 billion. Colgate considers that Procter & Gamble could readily import its products into New Zealand to compete with Colgate if Colgate attempted to raise prices or restrict output of its products in the relevant markets. Procter & Gamble already imports and distributes a number of products in New Zealand markets.

16.15 Henkel is as further global player that is a near entrant in the relevant markets. Henkel owns the “Dixan” brand for laundry detergent, and the “Persil” brand in Europe. Henkel’s laundry and home care business generated sales in excess of EUR3 billion in 2001 and 2002. Henkel made a successful USD2.9 billion bid for Dial Corp in December 2003. The deal was settled in March 2004.

16.16 Henkel also announced on 30 March 2004 that it had acquired the MAS brand liquid detergent business of Master Products in Mexico. This expands Henkel’s Mexican interests into a new product area – liquid detergent, and



complements existing interests in powder detergent, laundry soap and fabric softener products. Dial Corp has some of the world's largest brands, including Purex laundry detergent and fabric softener.

16.17 Kao Corporation is a Japanese manufacturer of a wide range of consumer products in Asia, Europe, and North America. Its product range includes laundry detergents, laundry additives, and dishwashing detergents. Kao is an existing player in the Australian market and has the ability to enter the New Zealand market in each of these areas.

16.18 Pental has recently purchased, the "Sunlight" brand from Unilever. Sunlight is an extremely strong brand in New Zealand. Although Sunlight has not traditionally competed in the laundry additives market, and has competed in the laundry detergent market in only a limited way through the Sunlight laundry soap, the technology to produce these products does not differ to any significant extent from that required to produce dishwashing liquid. Colgate considers that a Sunlight branded laundry additive could have a significant impact in the laundry additives market.

#### *Imports*

16.19 All existing players in the relevant New Zealand markets import some of their products. In addition, other entities (for example supermarkets) may take advantage of New Zealand's liberal parallel importing regime to themselves import branded products.

16.20 For example, the Warehouse uses the parallel importing regime as a marketing tool – mailouts regularly feature branded goods stated to be parallel imported. Colgate understands that The Warehouse has extensive networks around the world dedicated to sourcing branded products, including Colgate-Palmolive products, as and when required.

#### *Markets characterised by effective competitors*

16.21 Campbell Brothers' products at present compete vigorously with Colgate product in the laundry additives area, but are less vigorous competitors in the laundry detergent market. However, even if Campbell Brothers withdraws from the relevant markets, Colgate will continue to face vigorous and effective competition from the likes of Unilever, Reckitt Benckiser, and PZ Cussons.

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## **CONDITIONS OF EXPANSION**

### **17. Market conditions relevant to the ability of existing firms to expand**

17.1 The key conditions relevant to the ability of existing firms to expand are:

- distribution networks (including a sales force);

- importing arrangements;
- R & D capability; and
- marketing and communication capability.

17.2 In respect of both of the markets, existing players have already built up strong distribution networks and have sunk costs in existing production and importing arrangements.

17.3 Colgate considers that the critical factor for a competitor who wishes to expand is communications and marketing. However, Colgate does not consider that any of the above factors is a barrier to entry in the relevant markets.

## **18. Existing businesses that could expand**

### *Laundry additives market*

18.1 Colgate considers that Unilever is in a strong position to expand in the laundry additives market. Although in the past 3 financial years Unilever has decreased its support for its two fabric softeners, Comfort and Huggie, Unilever already has extensive experience in New Zealand markets and could again swiftly become a significant competitor in this market.

18.2 Ceres Enterprises is an example of recent expansion, having launched its “Ecover” brand in the laundry additive market.

18.3 Clorox has recently made aggressive moves to enter the New Zealand markets for laundry additives (mainly pre-wash soakers), floor cleaners, and spray cleaners. Colgate considers that this aggressive activity is likely to continue.

18.4 Quantum Pacific, a New Zealand based company, has recently launched its “Next Generation” brand in the laundry additives market. This is an expansion of its business, which has to date been focused on automatic dishwashing products.

### *Laundry detergent market*

18.5 Campbell Brothers recently expanded its Hurricane brand by introducing a laundry liquid to complement the laundry powder form of the product.

18.6 Colgate considers that Quantum Pacific, discussed in paragraph 18.4, is also a “near entrant” in the laundry detergent market. Quantum Pacific has a significant (in the order of 25%) presence in the automatic dishwashing detergent segment of the market and could expand further into the laundry detergent market.

18.7 In the laundry detergent market, Unilever is already a significant player, through its well-known brands Persil, Surf, and Drive. Unilever could expand with ease through increasing imports and/or manufacturing activities.

18.8 PZ Cussons is an existing competitor through its "Reflect XL" brand. Cussons is a vigorous competitor in the Australian markets and could expand its New Zealand operations, particularly in the laundry liquids area.

## **19. Conditions influencing expansion**

19.1 In respect of all relevant markets, the main condition influencing expansion is marketing and communications capability. In Colgate's view, a simple yet clever communication/marketing strategy can yield significant results in terms of expanding product penetration in a market. In Australia, a good example of this is the "Big Kev" brand which expanded swiftly as a result of using a unique personality to promote products.

## **20. Expected timeframe for supply to increase**

20.1 Colgate considers that all its existing competitors could expand their production or importing of the relevant products in less than 6 months, and possibly in as little as 2 months.

## **21. Extent to which the possible competitive response of existing competitors would constrain Colgate**

21.1 The possible competitive response of existing competitors already constrains Colgate to a reasonable extent. The relevant markets are extremely price competitive, and are characterised by low brand loyalty. In addition, a significant proportion of product sales (approximately 80%) in the laundry detergent market occur when the particular product is being promoted in-store.

21.2 In both the relevant markets, Colgate's main competitors are significant, global pharmaceutical and personal care companies. Each of these companies have sufficient funds to react immediately to any attempt by Colgate to increase price, decrease product quality, or lower service.

21.3 In addition, it is important to keep in mind that supermarkets are both purchasers and competitors of Colgate products. If Colgate attempted to raise the price at which its products are sold to supermarkets, even by a few cents, the supermarkets have the ability to stock more of their own private label products and/or not promote Colgate products.

**22. Summary - extent that Colgate would be constrained in its actions by the conduct of existing competitors**

22.1 Having regard to the conditions of expansion, and the existence of significant global competitors, Colgate would be constrained in its actions by the conduct of existing competitors after acquiring the relevant brands.

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**CO-ORDINATED MARKET POWER**

**23. Market characteristics facilitating or impeding co-ordinated behaviour**

*Laundry additives market*

23.1 There are a number of major brands supported by different competitors in the laundry additives market. In addition, the private label market is growing.

23.2 As discussed elsewhere in this application, products within this market are differentiated in terms of where they are used in the wash cycle, their form, and function (stain removal, wool wash etc). This will impede attempts to come to a collusive arrangement in respect of the products in this market.

23.3 Colgate considers that new entities could enter the market relatively swiftly, particularly entities that are already producing products in related markets. The near entrants in this market are generally established global players, or major acquirers of Colgate's products. This is a disincentive to existing businesses to engage in collusive activity.

23.4 Entry is also facilitated by New Zealand's liberal parallel importing regime.

23.5 In relation to fringe competitors, Clorox is a recent entry in the laundry additives market and as such is a fringe competitor, but is a significant threat to Colgate. The presence of such a competitor makes collusive activity less likely.

23.6 Laundry additives are generally discretionary products. Accordingly, this means that consumers are sensitive to changes in prices. If the price of a laundry additive increases, it is likely that consumers will cease purchasing the relevant product. This factor will impede any collusive activity in the market.

23.7 Colgate considers that the competition record in this industry is particularly strong, with vigorous competition between both major multi-national companies and local companies, and significant constraints placed on suppliers by purchasers.

23.8 In terms of production technology, entry is facilitated (and, therefore, collusive activity impeded) by the fact that the required technology is not

patented and is readily available. In addition, the product formulae are generally not patented, and raw materials not regulated.

23.9 The above characteristics mean that conditions in the laundry additives market are not conducive to supporting collusive arrangements.

#### *Laundry detergents market*

23.10 The laundry detergents market is characterised by 4 major manufacturers, and a number of fringe competitors. Accordingly, the concentration of sellers is only moderate.

23.11 Products in this market are differentiated by their form (i.e., whether they are standard powders, concentrate powders, liquid detergents, etc), and whether they are specially formulated for cold water, front loaders, sensitive skin and so on. In Colgate's view, there is a moderate to high level of product differentiation in this market. However, the product formulae are not generally protected by intellectual property rights, which facilitates entry.

23.12 Entry into the laundry detergents market is also facilitated by New Zealand's liberal parallel importing regime. In addition, existing competitors in other related markets are able to divert existing productive capacity into producing goods for the relevant markets if prices were to rise beyond competitive levels. Production of these products uses basic, mature technology that is not protected by intellectual property rights.

23.13 Although demand for products in the laundry detergents market is relatively inelastic, the market itself is extremely competitive. In addition, Colgate is significantly constrained in its conduct by the conduct of its largest acquirers, supermarkets.

23.14 Colgate considers that there is excess capacity in the laundry detergents market, particularly for liquid laundry detergent. Powder detergents have traditionally required a drying tower, but new production technology does not require a drying tower for laundry powder. The introduction of this new technology is likely to make a collusive arrangement more difficult.

23.15 In summary, the characteristics of the laundry detergents market are not conducive to facilitating collusive arrangements.

#### **24. Market characteristics facilitating or impeding monitoring and enforcement of co-ordinated behaviour**

24.1 Sales to consumers are small and frequent, but the price that a product is sold for in stores is set by the relevant retailer (i.e. the supermarkets). This is discussed further in paragraph 25.

24.2 Sales to the supermarkets are quite different. Colgate's territory managers visit the offices of individual supermarket chains (and sometimes individual

supermarkets) once or twice a week. Promotions are planned up to 3 months in advance. Significant data are collected regarding the amount of stock sent to supermarkets, but actual inventories in supermarkets are difficult to monitor.

- 24.3 Although pricing is transparent in terms of the price of goods on a shelf, Colgate and its competitors are not aware of the prices at which their respective products are sold to their major purchasers.
- 24.4 Accordingly, although pricing in the market is transparent to a certain extent, in Colgate's view this would not support disciplining parties to a collusive arrangement.

**25. Details of any price co-ordination, price matching or price following by market participants**

- 25.1 Manufacturers/distributors continually review their own pricing, both in terms of promotional and non-promotional pricing, and alter their prices in response to a price change, in terms of the shelf price, of their competitors.
- 25.2 The price that a product is sold for in stores is set by the relevant retailer. Manufacturers/distributors like Colgate and Campbell Brothers generally provide recommended retail prices for their products but the price that the product is sold at by the acquirer is determined by:
- the profit margin that the acquirer wishes to make on the product; and
  - the price of that product in competing stores.
- 25.3 Acquirers independently (from Colgate and each other) choose their profit margin. In Colgate's experience, acquirers can, and often do, choose to reduce margin, even to the point of negative margin if they wish to be perceived as competitive with a rival chain or store, to attract customers into a particular store. As already discussed, consumers in the relevant markets are highly price sensitive and are generally not loyal to a particular brand.
- 25.4 At the retail/supermarket level, Colgate understands that the various grocery chains operate price groupings or profiles for their stores. Stores that are in a heavily competitive area will generally have a lower price profile, while stores in areas with few competitors operate with a higher price profile. This occurs despite the fact that a manufacturer/distributor like Colgate sells products to an acquirer at a uniform price, i.e, irrespective of where the product will be sold.

**26. Acquisition of the relevant brands will not increase the risk of coordinated behaviour in the relevant market**

26.1 The acquisition by Colgate of the relevant brands will not increase the risk of coordinated behaviour in the relevant market.

26.2 The relevant markets to which this application relates are characterised by vigorous competition between the major manufacturers, and significant constraints are placed on the participants by the supermarkets.

## **PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION**

### **CONDITIONS OF ENTRY**

#### **27. Market conditions relevant to the ability of new firms to enter the market**

27.1 The main conditions relevant to the ability of the new firms to enter the market are:

- establishing a distribution network (including a sales force);
- establishing importing arrangements, or purchasing or contracting for manufacturing capabilities;
- access to materials (if the new entrant wishes to manufacture products);
- R & D capability; and
- marketing and communication capability.

27.2 Colgate considers that the above conditions constitute only low barriers to entry. This is consistent with the view of the ACCC in its decision in relation to Reckitt & Colman's acquisition of Benckiser Australia (ANZSIC code 2545).

#### **28. Identity of any businesses not currently supplying, but able to supply the relevant market**

28.1 Colgate considers that Henkel is a possible new entrant. Henkel's laundry and homecare business generated in excess of EUR3 billion in sales in 2002 through its major brands, including Dixan and Persil. Henkel made a successful USD2.9 billion bid for Dial Corp in December 2003. This deal was due to settle on 29 March 2004. Henkel has also just acquired Master Products' MAS brand liquid detergent business in Mexico. Dial Corp has some of the world's largest brands, such as Purex.

28.2 Kao and Procter & Gamble, both discussed earlier in the application, are also potential new entrants.

#### **29. Influential conditions of entry**

29.1 In Colgate's view, the most influential condition of entry is the ability to market the product and communicate product features to consumers.



## **LIKELIHOOD, SUFFICIENCY AND TIMELINESS OF ENTRY**

### **30. Timeframe for entry to occur, and for market supply to increase, in respect of each of the potential entrants**

- 30.1 Recent entry by private label products suggests entry into a market, and building a sizeable market share in that market, can occur in as little as 2-6 months.
- 30.2 By way of example, Foodstuffs introduced a liquid handwash product under its Pam's brand in Auckland in December 2003. By the end of January 2004, the product had secured up to 21% of the market share in Pak n' Save Auckland and 11.2% in New World Auckland.

### **31. The degree of likelihood a potential entrant would consider entry profitable at pre-acquisition prices**

- 31.1 Provided that the entrant invested in marketing to establish a brand name, Colgate considers that it would be profitable for a new entrant to enter the relevant markets at existing prices.
- 31.2 Private label entry into the markets will be facilitated by the fact that the "brands" are already established (Pams, Basics, Signature Range).

### **32. The degree the threat of entry is likely to cause market participants to react in a significant manner**

- 32.1 Given the highly price sensitive nature of the relevant products, if a new competitor entered the market at a lower price, existing competitors would be forced to compete even more vigorously on price or risk losing market share.

### **33. Conditions of entry considered influential on *de novo* entry**

- 33.1 Colgate does not consider that there are any significant barriers preventing new entrants from entering the market. This is consistent with the ACCC's decision in relation to the Reckitt & Colman/Benckiser acquisition (ANZSIC code 2545).
- 33.2 An effective way to achieve entry is through parallel importing, which is legal in New Zealand. If branded products, such as Colgate's, are parallel imported, the new entrant would not face difficulties in terms of establishing a product name.

### **34. Timeframe for *de novo* entry**

- 34.1 6 months. This includes up to 3 months to test the chemical stability of the product.

**35. Extent of the possibility of de novo entry constraining the merged entity**

- 35.1 The possibility of de novo entry would constrain Colgate to some extent. However, Colgate faces its greatest constraint from its major acquirers and the conduct of its competitors.

## **PART V: OTHER POTENTIAL CONSTRAINTS**

### **CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF SUPPLIERS**

#### **36. Suppliers to Colgate in each identified market**

36.1 Colgate has arrangements with various freight companies, and contracts with third parties to package its products.

#### **37. Owners of suppliers**

37.1 Colgate's suppliers are companies.

#### **38. Extent the conduct of suppliers of goods or services to the merged entity could constrain Colgate in each relevant market**

38.1 Colgate is constrained by its suppliers in terms of each supplier's ability to package products having regard to the availability of raw materials. Colgate is constrained by the availability of freight companies.

38.2 It is important to keep in mind that Colgate's arrangements with third party freight/packaging companies are not exclusive. That is to say, Colgate's suppliers are not constrained from entering into packaging and/or distribution arrangements with Colgate's competitors.

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### **CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF ACQUIRERS**

#### **39. Acquirers of goods or services supplied by Colgate in each market identified**

39.1 Supermarkets purchase in excess of 96% of the products that Colgate sells in New Zealand. This means that Colgate's business depends to a significant extent on the ongoing business of the supermarkets. These entities are:

- Progressive Enterprises Limited; and
- Foodstuffs.

39.2 The Warehouse also purchases some products from Colgate.

39.3 However the Warehouse also sources Colgate products from other markets, for example, Malaysia. Colgate understands that the Warehouse has a network of agents throughout the world to ensure that the particular product the Warehouse wishes to stock (for example Colgate toothpaste) is obtained for the cheapest price.

#### **40. Owners of acquirers**

40.1 Progressive Enterprises Limited (**Progressive**) is owned by Foodland Associated Limited, a public company incorporated in Australia. Foodland conducts wholesale and

retail supermarket operations in Western Australia and New Zealand. Progressive includes the Foodtown, Countdown, Woolworths, and Three Guys banner groups. Through its wholesale distribution operation, Progressive supplies the FreshChoice and SuperValue chains. More information on the Progressive group can be obtained from its website, [www.progressive.co.nz](http://www.progressive.co.nz).

40.2 Foodstuffs is comprised of three separate co-operative companies based in Auckland, Wellington, and the South Island. Each Foodstuffs company is a co-operative, owned by the individual owners of supermarkets within the chain. There is no overlapping ownership or directorship. The three Foodstuffs companies share ownership of Foodstuffs (New Zealand) Limited. Foodstuffs (New Zealand) also has ownership of the brands New World, Pak n' Save, and 4 Square, and leases them to the three Foodstuffs companies. More information on the Foodstuffs group can be obtained from its website, [www.foodstuffs.co.nz](http://www.foodstuffs.co.nz).

40.3 The Warehouse is a listed company.

**41. Extent the conduct of acquirers of goods or services to Colgate would constrain in each affected market**

41.1 The supermarkets exercise a significant level of constraint on the actions of Colgate.

41.2 As discussed in paragraph 39, supermarkets purchase 96% of the products sold by Colgate in New Zealand. They choose which products they will stock and the shelf space and positioning of the products (which affects sales of the relevant products). Within each supermarket's promotional programme, the individual supermarket chooses which product ranges it will promote and at what price they will be sold.

41.3 In addition, supermarkets also stock their own private labels. Foodstuffs stocks products under the "Budget" and "Pams" brands. Progressive stocks products under the "Basics" and "Signature" brands.

41.4 Private label entry started initially in high margin areas, but private labels are increasingly entering other, lower-margin categories. In addition, private label products have traditionally competed on price, but now are competing on quality as well. Progressive's Signature range is a good example of this.

41.5 Colgate understands that both Foodstuffs and Progressive have commercial strategies aimed at increasing the penetration of their private label products. In some areas, private label products already have a significant share of the market. For example, in the dishwashing liquid market, private label products constitute almost 30% of the market. Recently, Foodstuffs introduced a private label pump handwash product that gained up to 21% of the market share in Auckland Pak n' Save within 2 months.

41.6 Private label products are a significant threat to Colgate products in the relevant markets.

41.7 Colgate's market shares are significantly affected by the conduct of its acquirers. As discussed above, acquirers choose which products to stock, where that stock will be

placed on the shelf, and the pricing and promotional regimes for the relevant products. These are key determinants of the success of a product.

- 41.8 In addition, acquirers are able to take advantage of parallel importing laws. Colgate understands that Progressive has a strategy of trans-tasman sourcing which enables it to purchase Colgate goods in Australia and import them into New Zealand.
- 41.9 Foodstuffs have also indicated a willingness to parallel import, although it is not currently doing so.
- 41.10 In summary, the significant and largely unconstrained power of supermarkets means that Colgate is unable even to attempt to increase price or decrease output in an anti-competitive manner.

THIS NOTICE is given by Robert Koltai.

I am a director of Colgate-Palmolive Pty Limited and the General Counsel for the South Pacific Region and I am duly authorised to make this application.

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    day of                      2004

Signed by Robert Koltai

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Director/General Counsel