



COMMERCE COMMISSION

Decision No. 567

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

RECKITT BENCKISER PLC

and

BOOTS HEALTHCARE INTERNATIONAL LIMITED

The Commission: David Caygill
Donal Curtin
Anita Mazzoleni

Summary of Application: The acquisition by Reckitt Benckiser plc of Boots Healthcare International Limited.

Determination: Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition.

Date of Determination: 30 November 2005

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EXECUTIVE SUMMARY	I
THE PROPOSAL	1
PROCEDURE	1
STATUTORY FRAMEWORK.....	1
ANALYTICAL FRAMEWORK.....	2
THE PARTIES.....	3
Reckitt Benckiser.....	3
Boots Healthcare International.....	3
OTHER RELEVANT PARTIES	3
Manufacturers and Wholesalers.....	3
<i>GlaxoSmithKline plc (GSK).....</i>	<i>3</i>
<i>The Bayer Group (Bayer)</i>	<i>3</i>
<i>Other manufacturers and suppliers</i>	<i>3</i>
Retailers.....	4
<i>Pharmacies</i>	<i>4</i>
<i>Supermarkets.....</i>	<i>4</i>
INDUSTRY BACKGROUND	4
MARKET DEFINITION	5
Product Market	5
<i>Analgesics</i>	<i>6</i>
<i>Cold preparations</i>	<i>7</i>
<i>Throat preparations.....</i>	<i>7</i>
<i>Antiseptics and disinfectants.....</i>	<i>7</i>
<i>Herbal or vitamin-based products</i>	<i>8</i>
<i>Conclusions on Product Markets.....</i>	<i>8</i>
Functional Markets	9
Geographic Markets.....	9
Conclusion on Market Definition.....	9
COUNTERFACTUAL AND FACTUAL.....	10
Factual	10

Counterfactual	10
COMPETITION ANALYSIS	10
Existing Competition	10
The Analgesics Market	11
<i>Conclusions on the Analgesics Market</i>	12
The Cold Preparations Market	12
<i>Conclusions on the Cold Preparations Market</i>	13
The Throat Preparations Market	13
<i>Conclusions on the Throat Preparations Market</i>	14
The Antiseptics Market	14
<i>Conclusions on the Antiseptics Market</i>	16
OVERALL CONCLUSION	16
DETERMINATION ON NOTICE OF CLEARANCE	17

EXECUTIVE SUMMARY

1. A notice pursuant to s 66(1) of the Commerce Act 1986 was registered on 31 October 2005. The Notice sought clearance for the acquisition by Reckitt Benckiser of the business known as Boots Healthcare International from Boots Group plc and the Boots Company plc. As part of these arrangements, Reckitt Benckiser Healthcare UK Limited would purchase the entire share capital of Boots Holdings (BHI) Limited, which is the sole shareholder in Boots Healthcare New Zealand Limited. Clearance was sought for the acquisition only to the extent it would affect a market in New Zealand.
2. The Commission cleared the proposed acquisition as the acquisition results in a minimal amount of aggregation and the combined entity would be constrained by the presence of existing competitors.
3. The Commission considered the relevant markets to be the national markets for:
 - the wholesale distribution of analgesics;
 - the wholesale distribution of cold preparations;
 - the wholesale distribution of throat preparations; and
 - the wholesale distribution of antiseptics.
4. The Commission considers the likely counterfactual scenario would be that Boots Healthcare International is sold to a third party, assuming that the third party's acquisition would not give rise to a substantial lessening of competition.
5. In respect of all the relevant markets, the Commission is of the view that, given the minimal aggregation that would occur and the strength of the existing competition in all the markets, the proposed acquisition is unlikely to result in a substantial lessening of competition in the factual scenario compared to the counterfactual scenario.
6. The Commission is therefore satisfied that the proposed acquisition would not have, or be likely to have, the effect of substantially lessening competition in any of the affected markets.

THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered on 31 October 2005. The Notice sought clearance for the acquisition by the Reckitt Benckiser group of companies (Reckitt Benckiser or the Applicant) of shares, manufacturing assets and intellectual property comprising the business known as Boots Healthcare International from Boots Group plc and the Boots Company plc (together, Boots). As part of these arrangements, Reckitt Benckiser Healthcare UK Limited would purchase the entire share capital of Boots Holdings (BHI) Limited, which is the sole shareholder in Boots Healthcare New Zealand Limited. Clearance was sought for the acquisition only to the extent it would affect a market in New Zealand.

PROCEDURE

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 9 December 2005.
3. The Applicant sought confidentiality for specific aspects of the Application. A confidentiality order was made in respect of the information for up to 20 working days from the Commission's determination notice. When that order expires, the provisions of the Official Information Act 1982 will apply.
4. The Commission's approach to analysing the proposed acquisition is based on principles set out in the Commission's Mergers and Acquisitions Guidelines.¹

STATUTORY FRAMEWORK

5. Under s 66 of the Act, the Commission is required to consider whether the proposal will have, or would be likely to have, the effect of substantially lessening competition in a market. If the Commission is satisfied that the proposal is not likely to substantially lessen competition then it is required to grant clearance to the application. Conversely, if the Commission is not satisfied it must decline. The standard of proof that the Commission must apply in making its determination is the civil standard of the balance of probabilities.²
6. The substantial lessening of competition test was considered in *Air New Zealand & Qantas v Commerce Commission*, where the Court held:

We accept that an absence of market power would suggest there had been no substantial lessening of competition in a market but do not see this as a reason to forsake an analysis of the counterfactual as well as the factual. A comparative judgment is implied by the statutory test which now focuses on a possible change along the spectrum of market power rather than on whether or not a particular position on that spectrum, i.e. dominance has been attained. We consider, therefore, that a study of likely outcomes, with and without the proposed Alliance, provides a more rigorous framework for the comparative analysis required and is likely to lead to a more informed assessment of competitive

¹ Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

² *Foodstuffs (Wellington) Cooperative Society Limited v Commerce Commission* (1992) 4 TCLR 713-722.

conditions than would be permitted if the inquiry were limited to the existence or otherwise of market power in the factual.³

7. In determining whether there is a change along the spectrum which is significant the Commission must identify a real lessening of competition that is not minimal.⁴ Competition must be lessened in a considerable and sustainable way. For the purposes of its analysis the Commission is of the view that a lessening of competition and creation, enhancement or facilitation of the exercise of market power may be taken as being equivalent.
8. When the impact of market power is expected to be predominantly upon price, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material and ordinarily able to be sustained for a period of at least two years or such other time frame as may be appropriate in any given case.
9. Similarly, when the impact of market power is felt in terms of the non-price dimensions of competition such as reduced services, quality or innovation, for there to be a substantial lessening, or likely substantial lessening of competition, these also have to be both material and ordinarily sustainable for at least two years or such other time frame as may be appropriate.

ANALYTICAL FRAMEWORK

10. The Commission applies a consistent analytical framework to all its clearance decisions. The first step the Commission takes is to determine the relevant market or markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
 - with the acquisition in question (the factual); and
 - in the absence of the acquisition (the counterfactual).
11. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios. The Commission analyses the extent of competition in each relevant market for both the factual and the counterfactual scenarios, in terms of:
 - existing competition;
 - potential competition; and
 - other competition factors, such as the countervailing market power of buyers or suppliers.

³ *Air New Zealand & Qantas Airways Ltd v Commerce Commission*, unreported HC Auckland, CIV 2003 404 6590, Hansen J and K M Vautier, Para 42.

⁴ See *Fisher & Paykel Limited v Commerce Commission* (1996) 2 NZLR 731, 758 and also *Port Nelson Limited v Commerce Commission* (1996) 3 NZLR 554.

THE PARTIES

Reckitt Benckiser

12. Reckitt Benckiser is an international manufacturer and distributor of consumer healthcare and personal care products. Reckitt Benckiser is best known for its domestic cleaning products.
13. In New Zealand, Reckitt Benckiser distributes a range of analgesics, cold and throat preparations and antiseptics including the brands Disprin, Lemsip and Dettol.

Boots Healthcare International

14. Boots Healthcare International (BHI) is the consumer healthcare business of Boots Group plc and the Boots Company plc (together, Boots). Boots is an international manufacturer, distributor and retailer of consumer health and beauty products.
15. In New Zealand, BHI distributes a range of products including analgesics, cold and throat preparations and antiseptics, under the brands Nurofen, Strepsils, Strepfen and Savlon.

OTHER RELEVANT PARTIES

Manufacturers and Wholesalers

GlaxoSmithKline plc (GSK)

16. GSK is an international manufacturer and distributor of prescription medicines and consumer healthcare products. In New Zealand, GSK distributes pain relief products primarily under the Panadol brand, and cold preparations under the Coldrex label.

The Bayer Group (Bayer)

17. Bayer is an international manufacturer and distributor of healthcare and nutrition products for both humans and animals. Also, Bayer recently acquired the non-prescription medicine business of the Roche Group, which included the antiseptic Bepanthen.

Other manufacturers and suppliers

18. In addition to the suppliers listed above, there are a number of other suppliers of consumer health products. Although these parties manufacture and distribute a range of products, typically, they only supply a single product line that competes with both Reckitt Benckiser and BHI, such as either an analgesic or a throat preparation. The other suppliers in New Zealand include:
 - Pfizer Inc (Pfizer);
 - Healthcare Manufacturing Group (HMG);
 - Multichem Limited;
 - AFT Pharmaceuticals Limited (AFT);
 - 3M Pharmaceuticals (3M); and

- Proctor & Gamble (P&G).

Retailers

Pharmacies

19. There are approximately 900 pharmacies in New Zealand which, in addition to supplying prescription medicines, typically retail a range of consumer healthcare products. Most pharmacies are independent operators although many pharmacies are members of a buying group or belong to a banner group. The main banner groups include Amcal, Unichem, Radius and Life pharmacies.

Supermarkets

20. The two main supermarket chains in New Zealand are Progressive Enterprises Limited (Progressive) and Foodstuffs. Both supermarket chains retail a range of healthcare products including a number of house brand products.
21. Progressive operates the Foodtown, Countdown and Woolworths brands. Through its wholesale distribution operation, Progressive also supplies the FreshChoice and SuperValue stores.
22. 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 the supermarkets within the chain.

INDUSTRY BACKGROUND

23. Medicines are generally divided into two categories, prescription and over-the-counter (OTC) medicines. As the name suggests, prescription medicines are only available from a pharmacy with a prescription from a doctor. OTC medicines can be sold directly to consumers without the need for a prescription by retail pharmacies, supermarkets and some consumer good stores.
24. The proposed acquisition does not involve any prescription products. Accordingly, this category of products is not considered relevant to the present application.
25. OTC products fall into two categories. Pharmacy-only medicines (also known as restricted medicines) are medicines that can be sold under the direction of a pharmacist without a doctor's prescription but they are not available for self-selection from the pharmacy shelves. Further, the sale must be made by a pharmacist. When selling these medicines, the pharmacist must fulfil special requirements designed to make sure the consumer is properly informed about the safe and correct use of the medicine.
26. Other OTC products, which are not specifically designated as pharmacy-only, can be sold in any retail outlet, such as supermarkets, service stations and department stores. These products are typically referred to as 'open' or grocery products. As certain pharmacy-only products become more widely used and consumers become aware of the effects of the medicine, there is a tendency for these products to be reclassified as grocery products. For example, certain products in BHI's Nurofen range were reclassified as grocery medicine and have been sold by supermarkets and similar retailers since July 2004.

27. Pharmacies may now be co-located with direct access between the pharmacy and other businesses. For example, a pharmacy may now operate within a specified area of a supermarket. Both Progressive and Foodstuffs Auckland have recently introduced pharmacies in some of their stores.

MARKET DEFINITION

28. The Act defines a market as:

“... a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.”⁵

29. For the purpose of competition analysis, the internationally accepted approach is to assume the relevant market is the smallest space within which a hypothetical, profit-maximising, sole supplier of a good or service, not constrained by the threat of entry would be able to impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the SSNIP test). The smallest space in which such market power may be exercised is defined in terms of the dimensions of a market discussed below. The Commission generally considers a SSNIP to involve a five to ten percent increase in price that is sustained for a period of one year.

Product Market

30. The greater the extent to which one good or service is substitutable for another, on either the demand-side or supply-side, the greater the likelihood that they are bought and supplied in the same market.
31. Close substitute products on the demand-side are those between which at least a significant proportion of buyers would switch when given an incentive to do so by a small change in their relative prices.
32. Close substitute products on the supply-side are those between which suppliers can easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs, when they are given a profit incentive to do so by a small change to their relative prices.
33. The Applicant submitted that the relevant markets are those for the national wholesale distribution of:
- analgesics (non-narcotic and non-antipyretic);
 - cold preparations without anti-infectives;
 - throat preparations; and
 - antiseptics and disinfectants.
34. The Applicant based these market definitions on the European Pharmaceutical Marketing Research Association’s classifications. The Commission has previously considered the appropriateness of using this classification system

⁵ s 3(1A) of the Commerce Act 1986.

when analysing pharmaceuticals and medicines⁶. However, the Commission also noted that there may be instances where broader or narrower classifications are necessary, dependent upon the particular circumstances of the medicines and the condition requiring treatment.

Analgesics

35. Analgesics are medicines used in the treatment of pain and, if they contain an antipyretic ingredient, to reduce fever.
36. Industry participants advised that most everyday pain can be easily controlled with an over-the-counter medicine. The three common active ingredients used in the treatment of everyday pain are paracetamol, aspirin and ibuprofen. All industry participants advised the Commission that there is a strong degree of substitutability between these active ingredients in the treatment of common pain. However, as the severity of the pain increases, the treatment is more specialised and the active ingredient is stronger. This is described in the table below.

Table 1: Pain Relief Treatments

Pain Scale	Examples	Active ingredients
Mild-to-moderate	Headache, backache, toothache, period pain	Paracetamol, Aspirin, Ibuprofen
Moderate-to-strong	Migraine, muscle cramps, severe post-operative pain	Codeine in combination with paracetamol or ibuprofen
Strong-to-severe	Burns, bone fractures and other serious injuries	Prescription Medicines such as Morphine

Source: [http:// www.unichem.co.nz](http://www.unichem.co.nz)

37. Mild-to-moderate pain is typically treated with a grocery medicine, whereas moderate-to-strong pain may be treated with a pharmacy-only or prescription product. The Commission notes that each active ingredient has its own properties that restrict its use to certain consumers. For example, ibuprofen is not advised for use by pregnant women and currently codeine is only available in a pharmacy-only product.
38. However, industry participants advised that all these products are used in the treatment of pain and there is not a separate market for the specific active ingredient, such as either paracetamol or aspirin. Rather, a consumer may choose or be advised by a pharmacist to use a particular type of product based on the person's symptoms. Nevertheless, all these products are used for the treatment of pain.
39. Accordingly, the Commission considers the appropriate product to be non-prescription medicines for the treatment of pain (analgesics).

⁶ Decision 398 Glaxo Wellcome plc/SmithKline Beecham plc and Decision 496 Pfizer Laboratories Ltd / Pharmacia Ltd.

Cold preparations

40. The Applicant submitted that cold preparations are products used for the relief of cold and influenza symptoms, including combination products containing antihistamines with decongestants, analgesics, anti-pyretics, vitamins, cough suppressants and expectorants.
41. The Applicant noted that presently it is the only supplier to supermarkets of a cold preparation product containing phenylephrine, a drug used to relieve nasal congestion. Recent regulatory changes have allowed for phenylephrine products to be sold in supermarkets. Further, it advised that all other cold preparations are sold through pharmacies.
42. The other common active ingredient in cold preparations is pseudoephedrine. Pseudoephedrine is a restricted product and is only available in pharmacies, due to its potential use in the manufacture of an illicit drug. On the demand side, industry participants advised that a pseudoephedrine-based product is substitutable with a phenylephrine product.
43. The Applicant submitted that the supply of cold preparations crosses over into the market for throat preparations. It suggested that there could be a wider market that would include all cold, flu and throat preparations. Industry participants were also unclear on where the boundaries of the market are, suggesting that many consumers use a cough medicine for the treatment of a cold. Further, some consumers are known to take an analgesic in combination with a throat lozenge to treat the onset of a cold. The Applicant also noted that although not all products would be substitutable, various products in a wider market could be used in combination to relieve the symptoms of a cold or flu.
44. However, the Commission considers that for the purposes of the present application, the relevant competition effects are best identified by defining a separate product market for cold preparations, noting that if competition concerns are not identified within the narrowly-defined market they are unlikely to arise in a broadly-defined market.

Throat preparations

45. The Applicant submitted that throat preparations include all preparations used in the treatment of upper respiratory tract infections. Typically, these preparations come in a variety of forms including tablets, drops, sprays, gargles and medicated confectionery, although the most common form is a lozenge.
46. Although differences in the formulation exist, industry participants considered that depending on the severity of the symptoms consumers switch between products in the lower end of the market. For instance those products sold in a grocery store as opposed to those at the more expensive end of the market, such as those sold only in pharmacies. For example, 3M's Difflam lozenges are only sold in pharmacies.
47. Accordingly, the Commission considers the relevant product market to be throat preparations.

Antiseptics and disinfectants

48. The Applicant submitted the relevant market includes all dermatological antiseptic preparations for human use. Typically antiseptic preparations are

available as a cream although there are two main antiseptic liquids, Reckitt Benckiser's Dettol and BHI's Savlon.

49. Industry participants advised the Commission that although Dettol and Savlon have a range of similar products, generally they are used for different purposes and were unclear on how to classify Reckitt Benckiser's Dettol liquid.
50. The Applicant submitted that, while Dettol is used as an antiseptic for personal use, it is predominately used as a household disinfectant and is typically stocked in stores alongside the household disinfectants, rather than with the personal antiseptics. For example, Dettol liquid is commonly used as a disinfectant for floors and bench tops as well as for clothes washing. All industry participants stated that this was the main use of Dettol liquid in New Zealand. This is also true for other overseas markets, such as in the United Kingdom where it is largely promoted as a disinfectant.
51. Industry participants considered that where Dettol liquid is used as a disinfectant, there are numerous other household disinfectants available. However, Dettol liquid is sometimes also used as an antiseptic but not to the same extent as Savlon antiseptic liquid. Industry participants stated that Savlon is considered to be gentler on wounds as Dettol has a tendency to 'sting'.
52. The Commission also investigated the substitutability between antiseptic/disinfectant liquids and creams. Industry participants advised that an antiseptic liquid is substitutable with a cream and, typically, its use is dependent on the nature of the injury. For example, a liquid may be used to clean a wound before it is bandaged whereas a cream could be applied instead.
53. In addition, there are a number of alternative antiseptic and disinfectant products that are available for certain conditions such as sunburn, insect bites and nappy rash.
54. Accordingly, for the purposes of the present application the Commission considers the relevant product market to be antiseptic preparations for personal use, which include both liquid and cream forms (antiseptics).

Herbal or vitamin-based products

55. The Applicant submitted that in particular regard to analgesics, cold and throat preparations herbal or vitamin-based products should also form part of the relevant market.
56. Industry participants advised the Commission that herbal treatments and vitamin supplements are, typically, used as a precautionary measure to prevent the onset of potential afflictions. The Commission understands that some consumers may use these herbal products, or vitamins, to treat the symptoms of illnesses, such as headaches and colds. However, the Commission considers that these products are, generally, not considered to be medicines that are used for the treatment of specific illnesses.
57. Accordingly, the Commission considers, for the purposes of the present application, herbal or vitamin-based products to be outside the relevant markets.

Conclusions on Product Markets

58. The Commission concludes that for the purposes of assessing the competition implications of the proposed acquisition, the appropriate product markets are:

- analgesics;
- cold preparations;
- throat preparations; and
- antiseptics.

Functional Markets

59. The production, distribution and sale of a product typically occur through a series of functional levels – for example, the manufacturing/import level, the wholesale/distribution level and the retail level. It is often useful to identify the relevant functional level in describing a market, as a proposed business acquisition may affect one horizontal level, but not others. Generally, the Commission will seek to identify separate relevant markets at each functional level affected by an acquisition and assess the impact of the acquisition on each.
60. Both Reckitt Benckiser and BHI import and distribute their products to wholesalers, retail groups and hospitals. They also supply supermarkets, grocery retailers and other retailers who are permitted to sell such items. Typically, suppliers of products in the relevant markets manufacture the medicines off-shore and import them into New Zealand where they are distributed by their local subsidiaries. There are some domestic manufacturing facilities currently operating, although these tend to be in the minority.
61. The Applicant submitted that the relevant distribution network includes both pharmacies and grocery channels. The Commission understands that, typically, consumers purchase OTC products from both pharmacies and grocery stores when they require those kinds of products. Further, many products are sold in both channels and where a particular product is sold in only one channel, primarily because it is a pharmacy-only product, it is in competition with products in the other channels.
62. Accordingly, the Commission concludes that the appropriate functional level in respect of the four product markets identified is the wholesale distribution to both the pharmacy and grocery channels.

Geographic Markets

63. The Commission defines the geographic dimension of a market to include all of the relevant, spatially dispersed sources of supply to which buyers would turn should the prices of local sources of supply be raised.
64. All the main suppliers of analgesics, cold preparations, throat preparations and antiseptics supply their product on a national basis and advertise their products nationally. The Commission therefore concludes that for all relevant markets, the geographic scope is national.

Conclusion on Market Definition

65. The Commission concludes that for the purposes of assessing the competition implications of the proposed acquisition, the relevant markets are the national markets for the wholesale distribution of:
 - analgesics (the analgesics market);
 - cold preparations (the cold preparations market);

- throat preparations (the throat preparations market); and
- antiseptics (the antiseptics market).

COUNTERFACTUAL AND FACTUAL

66. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a comparative judgment considering the likely outcomes between two hypothetical situations, one with the acquisition (the factual) and one without (the counterfactual).⁷ The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

Factual

67. In the factual scenario, other than the combined entity, there would be a number of other manufacturers/distributors supplying products in each of the four markets. However, the Commission notes that for each market, the number of competitors varies and unlike the combined entity, no other competitor supplies all four markets.
68. The Applicant submitted that the proposed acquisition of BHI would give it a significant opportunity to grow its business in the consumer health and personal care areas. Reckitt Benckiser has traditionally been known as a household cleaning product company with its strengths in laundry detergents and dishwashing liquids. It submitted that it intends to continue the operations of BHI and integrate the business into its own operations.

Counterfactual

69. In its home market of the United Kingdom, the Boots Group plc stated that it is focusing on its Boots the Chemist retail pharmacy business operations, announcing in April this year that it intended to sell the BHI business. Since that time, it has conducted a confidential auction sale process for this business. Reckitt Benckiser was the successful bidder in that process, which also included [].
70. Accordingly, the Commission considers it likely that the counterfactual scenario would be that BHI is sold to a third party. Given the recent negotiations, the Commission considers that it would likely be sold to one of the other parties that were subject to the initial negotiations with Boots, assuming that the acquisition would not give rise to a competition concern.

COMPETITION ANALYSIS

Existing Competition

71. Existing competition occurs between those businesses in the market that already supply the product, and those that could readily do so by adjusting their product-mix (near competitors).
72. An examination of concentration in a market can provide a useful indication of the competitive constraints that market participants may place upon each other,

⁷ *Air New Zealand & Qantas Airways Ltd v Commerce Commission (No 6)*, unreported HC Auckland, CIV 2003 404 6590, Hansen J and K M Vautier, Para 42.

providing there is not significant product differentiation. Moreover, the increase in seller concentration caused by a reduction in the number of competitors in a market by an acquisition is an indicator of the extent to which competition in the market may be lessened.

73. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:
- the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is below 70%, the combined entity (including any interconnected or associated persons) has less than in the order of 40% share; or
 - the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is above 70%, the market share of the combined entity is less than in the order of 20%.
74. The Commission recognises that concentration is only one of a number of factors to be considered in the assessment of competition in a market. In order to understand the impact of the acquisition on competition, and having identified the level of concentration in a market, the Commission considers the behaviour of the businesses in the market.
75. Supply in each of the four markets is characterised by substantial existing competitors in the form of large international pharmaceutical manufacturing companies. Each of these major companies has a wholesale distribution arm operating in New Zealand and other countries.
76. The tables below set out relevant data including the market shares and brands of Reckitt Benckiser and BHI and their existing competitors in each of the four markets identified. The market share information represents the estimated market share at the retail sales level and is based on AC Nielsen grocery data and IMS pharmacy data⁸.

The Analgesics Market

77. The main competitors in the analgesics market are GSK, BHI, and Reckitt Benckiser with a number of other competitors also supplying the market.
78. Table 2 shows the estimated market shares for the wholesale distribution of medicines in the analgesic market for the 2004/2005 year.

⁸ IMS Health (NZ) Limited is a research organisation specialising in the pharmaceuticals industry.

Table 2: Estimated Market Shares of the Analgesic Market

Supplier	Brands	Market Share
Reckitt Benckiser	Disprin, Solprin, Cardiprin	[]
BHI	Nurofen range	[]
<i>Combined Entity</i>		[]
GSK	Panadol, Panadeine	[]
HMG	Paracare	[]
Multichem	Pacimol	[]
Others	Includes Pfizer's Pamol, AFT's Paraped	[]
Total		100%
Total Market Size		[]

79. Table 2 indicates that, post-acquisition, the combined entity would have a market share of [] and the three-firm concentration ratio would be []. This is outside the Commission's safe harbours.
80. However, given the small market share of Reckitt Benckiser and the presence of a number of other competitors, the impact of the acquisition in the factual compared to the counterfactual is likely to be minimal.
81. Industry participants did not express any concerns with the proposed acquisition in respect of analgesics. All parties stated that GSK's Panadol is the market leader and it is a very strong brand and has a loyal following. Further, aspirin-based products, such as Reckitt Benckiser's Disprin, only represent a small segment of the market and their use has steadily declined in recent times with paracetamol based products forming the bulk of the analgesics market.

Conclusions on the Analgesics Market

82. Accordingly, given the minimal aggregation that would occur as a result of the proposed acquisition, and the strength of existing competitors, notably GSK, the Commission is satisfied that there is unlikely to be a substantial lessening of competition in the analgesics market as a result of the acquisition.

The Cold Preparations Market

83. The main competitors in the cold preparations market are Reckitt Benckiser, Pfizer, GSK and BHI with several small competitors also supplying the market.
84. Table 3 shows the estimated market shares for the wholesale distribution of medicines in the cold preparations market for the 2004/2005 year.

Table 3: Estimated Market Shares of the Cold Preparations Market

Supplier	Brands	Market share
Reckitt Benckiser	Lemsip	[]
BHI	Nurofen Cold & Flu	[]
<i>Combined Entity</i>		<i>[]</i>
Pfizer	Codral, Benadryl, Actifed, Broncelix	[]
GSK	Coldrex	[]
Whitehall-Robbins Inc.	Dimetapp	[]
Others	Includes P&G's Vicks Formula 44	[]
Total		100%
Total Market Size		[]

85. Table 3 indicates that, post-acquisition, the combined entity would have a market share of [] and the three-firm concentration ratio would be []. This is outside the Commission's safe harbours.
86. However, given the small market share of BHI and the presence of a number of other competitors, the impact of the acquisition in the factual compared to the counterfactual is likely to be minimal.
87. Further, industry participants did not express any concerns with the proposed acquisition in respect to cold preparations, noting the strength of both Pfizer and GSK in this market. Industry participants also noted that, although Reckitt Benckiser's Lemsip product is strong in the grocery channel, it is not as successful in pharmacies where both Pfizer and GSK are the market leaders.

Conclusions on the Cold Preparations Market

88. Accordingly, given the minimal aggregation that would occur as a result of the proposed acquisition and the strength of existing competitors, notably Pfizer and GSK, the Commission is satisfied that there is unlikely to be a substantial lessening of competition in the cold preparations market as a result of the acquisition.

The Throat Preparations Market

89. The main competitors in the throat preparation market are BHI, Reckitt Benckiser, 3M, P&G and Cadbury, with a number of smaller competitors also supplying the market.
90. Table 4 shows the estimated market shares for the wholesale distribution of medicines in the throat preparations market for the 2004/2005 year.

Table 4: Estimated Market Shares of the Throat Preparation Market

Supplier	Brands	Market share
Reckitt Benckiser	Lemsip	[]
BHI	Strepsils, Stepfen	[]
<i>Combined Entity</i>		[]
3M	Durotuss, Difflam-C	[]
P&G	Vapo Drops, Vicks	[]
Cadbury	Throaties	[]
Others	Includes Bayer's Cepacol, Maceys' Kurols, Fauldings Betadine, Lofthouse's 'Fisherman's Friend'	[]
Total		[]
Total Market Size		[]

91. Table 3 indicates that, post-acquisition, the combined entity would have a market share of [] and the three-firm concentration ratio would be []. This is outside the Commission's safe harbours.
92. However, given the small market share of Reckitt Benckiser and the presence of a number of other competitors, the impact of the acquisition in the factual compared to the counterfactual is likely to be minimal. Further, industry participants did not express any concerns with the proposed acquisition in respect of throat preparations.

Conclusions on the Throat Preparations Market

93. Accordingly, given the minimal aggregation that would occur as a result of the proposed acquisition, and the strength of existing competitors, notably 3M and P&G, the Commission is satisfied that there is unlikely to be a substantial lessening of competition in the throat preparations market as a result of the acquisition.

The Antiseptics Market

94. The main competitors in the antiseptics market are Reckitt Benckiser, BHI, and Bayer with a number of smaller players such as AFT, Fauldings Healthcare Pty Limited and TP Health Limited also supplying the market.
95. Table 5 shows the estimated market shares for the wholesale distribution of medicines in the antiseptics market for the 2004/2005 year.

Table 5: Estimated Market Shares of the Antiseptics Market

Supplier	Brands	Market Share
Reckitt Benckiser	Dettol	[]
BHI	Savlon	[]
<i>Combined Entity</i>		[]
Bayer	Bepanthen	[]
AFT	Crystacide	[]
Fauldings Healthcare	Betadine	[]
TP Health Limited	Thursday Plantation	[]
Others	Includes Pfizer's Medicreme, Sanofi- Aventis' Ponoxytan	[]
Total		100%
Total Market Size		[]

96. Table 5 indicates that, post-acquisition, the combined entity would have a market share of [] and the three-firm concentration ratio would be []. This is outside the Commission's safe harbours.
97. However, given the presence of a number of other competitors and the level of aggregation, the impact of the acquisition in the factual compared to the counterfactual is likely to be minimal.
98. Industry participants did not express any concerns with the proposed acquisition in respect of antiseptics. Further, the market share information includes sales of Dettol liquid as a disinfectant. As stated in the market definition section, Dettol liquid has a number of uses. Industry participants stated that the most common use for the liquid form is as a household disinfectant, although it is difficult to accurately quantify this proportion of its use. The Commission considers the use of Dettol as a household disinfectant inflates Dettol's share in this market.
99. Bayer stated that its Bepanthen cream currently competes with Savlon in pharmacies []. [] did not consider Dettol cream to be a relevant competitor in this market. Also, BHI stated that its Dettol cream has very little market share [].
100. Industry participants also stated that multi-purpose antiseptics, like the Savlon and Dettol creams, are becoming less and less popular as more products enter the market that are designed for specific treatments such as sunburn, insect bites and nappy rash. In this regard, the Commission considers that competitors in this market face a degree of constraint from a number of products that fall outside the boundaries of the defined market. The Commission also notes that the barriers to expansion from existing competitors, notably Bayer, are relatively low.

Conclusions on the Antiseptics Market

101. Accordingly, given the strength of existing competitors and the level of aggregation, the Commission is satisfied that there is unlikely to be a substantial lessening of competition in the antiseptics market as a result of the acquisition.

OVERALL CONCLUSION

102. The Commission has considered the probable nature and extent of competition that would exist, subsequent to the proposed acquisition, in the following national markets for:

- the wholesale distribution of analgesics;
- the wholesale distribution of cold preparations;
- the wholesale distribution of throat preparations; and
- the wholesale distribution of antiseptics.

103. The Commission considers the likely counterfactual scenario would be that BHI is sold to a third party, assuming that the third party's acquisition would not give rise to a substantial lessening of competition.

104. In respect of all the relevant markets, the Commission is of the view that given the minimal aggregation that would occur and the strength of the existing competition in all the markets, the proposed acquisition is unlikely to result in a substantial lessening of competition in the factual scenario compared to the counterfactual scenario.

105. The Commission is therefore satisfied that the proposed acquisition would not have, or be likely to have, the effect of substantially lessening competition in any of the affected markets.

DETERMINATION ON NOTICE OF CLEARANCE

106. Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by the Reckitt Benckiser group of companies of shares, manufacturing assets and intellectual property comprising the business known as Boots Healthcare International from Boots Group plc and the Boots Company plc, which includes Reckitt Benckiser Healthcare UK Limited acquiring Boots Healthcare New Zealand Limited.

Dated this 30th day of November 2005

David Caygill
Deputy Chair
Commerce Commission