COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

Date: 16 May 2014

The Registrar
Market Structure Team
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.

Part 1: Transaction Details

1. **The acquirer**

1.1 Details for Reckitt Benckiser Group Plc

Address	103-105 Bath Road Slough Berkshire SL1 3UH United Kingdom
Contact person	Bill Mordan
Email Address	**[CONFIDENTIAL]**
Telephone	T **[CONFIDENTIAL]** F **[CONFIDENTIAL]**
Website	http://www.rb.com

1.2 In the first instance please contact:

Name	Torrin Crowther and Glenn Shewan of Bell Gully
Email Address	torrin.crowther@bellgully.com glenn.shewan@bellgully.com
Telephone	T +64 9 916 8621 T +64 9 916 8726

2. **The seller**

2.1 Details for McNeil-PPC, Inc.

Address	199 Grandview Road Skillman, NJ 08558
Contact person	Mark Anschau, Senior Counsel, Australia, New Zealand, Fiji
Email Address	**[CONFIDENTIAL]**
Telephone	T **[CONFIDENTIAL]**
Website	http://www.mcneil-ppc.com/

2.2 In the first instance please contact:

Name	David Lewis and Imelda-Rose Sheerin of Kensington Swan
Email Address	david.lewis@kensingtonswan.com imelda-rose.sheerin@kensingtonswan.com

Telephone	T +64 9 914 7263 T +64 9 914 7298

3. **Interconnected and associated entities**

3.1 Please see organisational charts attached at Annexes 1 and 2.

4. **The proposed acquisition**

4.1 The proposed acquisition is part of a global deal that will ultimately result (subject to satisfaction of relevant conditions) in the acquisition by RB of the K-Y brand and product assets on a global basis. The country by country acquisitions that form part of the global deal are expected to complete on a country by country basis as and when the conditions in those countries are satisfied. Completion has already occurred in a number of jurisdictions in which the acquisition was unconditional or where conditions (including competition conditions) have been satisfied.

4.2 Accordingly, clearance is sought for RB (or an interconnected body corporate of RB) to acquire from Johnson & Johnson (J&J) through its subsidiary, McNEIL-PPC, Inc.,(and/or any interconnected bodies corporate) insofar as they relate to New Zealand, the K-Y brand and product assets comprising:

(a) all K-Y product-related IP, including domain names, toll free numbers, formulas, technical data and patents;

(b) regulatory information relating to the Products;

(c) any existing promotional and marketing material;

(d) third party supply and manufacturing rights and obligations; and

(e) existing finished goods inventory of the Products,

(**the Proposed Acquisition**).

No plant, facilities or employees are transferring as part of the Proposed Acquisition.

4.3 Regarding New Zealand, transfer of the assets as described in (a) to (f) above is conditional on RB receiving Commerce Commission clearance for the Proposed Acquisition. Until the New Zealand conditions are met, the relevant vendor companies will continue to own and operate all aspects of the K-Y business in New Zealand.

5. **Commercial rationale for the transaction**

Rationale for Sale

5.1 **[CONFIDENTIAL]**.

Rationale for the Proposed Acquisition

5.2 **[CONFIDENTIAL]**.

5.3 **[CONFIDENTIAL]**.

5.4 **[CONFIDENTIAL]**.

6. **Transaction documents**

6.1 A copy of the Asset Purchase Agreement For Certain Rest of World Territories and the Singapore Specific Purchase Agreement (which contains the relevant competition condition for New Zealand) are provided as Annexes 12 and 13.

7. Overseas notifications

7.1 The US FTC has approved the US aspects of the Proposed Acquisition. It is also subject to competition law approval in the UK, Spain, Portugal, Australia, Brazil and Columbia.

7.2 RB is happy to provide further information on the status of the various filings and to discuss any requests of the Commission in regard to the exchange of confidential information with competition agencies in the above jurisdictions.

Part 2: The Industry

8. **Goods and services supplied by the merger parties**

Reckitt Benckiser

Corporate overview

8.1 RB is a global consumer goods company, manufacturing and selling of a range of health, hygiene, home, food and pharmaceutical products.

8.2 RB is listed on the London Stock Exchange and is headquartered in Slough in the United Kingdom. In New Zealand, RB trades through its wholly owned subsidiary Reckitt Benckiser (New Zealand) Limited.

8.3 Relevantly, RB sells the Durex range of condoms, pleasure gels, toys and massage gels. Relevant to the Proposed Acquisition, RB has 6 products in its 'pleasure gels and lubes' category, and 3 products in its 'massage / gels' category under the Durex brand. Durex products are supplied primarily to grocery stores, pharmacies and convenience stores for supply to consumers (see Annex 3).

8.4 The New Zealand Durex business sits within RB's Health & Personal Care division and is managed by **[CONFIDENTIAL]**.

Johnson & Johnson

Corporate overview

8.5 J&J is a global medical devices, pharmaceutical and consumer goods company with operations in more than 60 countries worldwide. The company is listed on the New York Stock Exchange and is headquartered in New Brunswick, New Jersey, USA. J&J employs approximately 128,700 people.

8.6 The company produces consumer goods under 48 product brands as well as a range of prescription products and medical devices. Relevant to the Proposed Transaction, J&J sells the K-Y brand of personal lubricant products in New Zealand (see Annex 4).

8.7 **[CONFIDENTIAL]**.

8.8 **[CONFIDENTIAL]**.

8.9 **[CONFIDENTIAL]**.

9. **Affected industries**

Overview

9.1 The sexual wellbeing category (**SWB**) encompasses condoms, personal lubricants, vaginal moisturisers, feminine enhancers, body and massage oils, sexual accessories, and desensitising gel. The SWB category is large and growing as a result of consumer trends and shifting social norms.

9.2 Personal lubricants fall within the SWB category. Personal lubricants are specialised lubricants used during human sexual activity to reduce friction between body parts, or between body parts and other objects.

Functional market levels

<u>Manufacturing</u>

9.3 Most personal lubricant brands sold in New Zealand are manufactured overseas, including in Thailand, USA and Europe. Sylk, a leading competing lubricant brand, is manufactured in New Zealand, as are certain smaller brands, such as Flowmotion Organic Lubricant.

9.4 Durex personal lubricants sold in New Zealand are manufactured under contract in Thailand by IDS Manufacturing Ltd, with the exception of its Play O product, which is manufactured in the UK. J&J's K-Y Jelly skus are manufactured and packaged by **[CONFIDENTIAL]** in Australia, while its K-Y Yours & Mine product is manufactured by **[CONFIDENTIAL]** in the USA. Ansell products are manufactured in Germany, System JO products in the USA and Wet Stuff products in Australia.

<u>Wholesalers / distributors</u>

9.5 RB negotiates directly with the Progressive Enterprises Limited (**PEL**) and the Foodstuffs cooperatives (**Foodstuffs**).

9.6 RB sells to adult retailers via wholesalers, for example, Universal Specialties Limited (a wholesaler on-selling to a range of customers including Prostitutes Collective, Condom World and others).

9.7 In relation to pharmacies, **[CONFIDENTIAL]** via five major pharmacy wholesalers, set out in the following table.

CDC	A cooperative wholesaler of pharmaceutical, OTC and veterinary products based in Christchurch but with operations in Lower Hutt and Dunedin.
Health Support	Supplies a range of medical products and hospital supplies. Most of Health Support's business is with hospitals, but it also supplies pharmacies and other channels.
ProPharma	Through its PBL business, ProPharma is the main distributor to Pharmacy Brands (now called Green Cross), which is the umbrella group for Unichem and Life pharmacies (and previously Amcal, Radius and Care pharmacies, which have recently undergone rebranding). It also distributes on a nationwide basis to independent pharmacies.
Vantage	Vantage is an independent buying group representing 120 stores. The group negotiates directly with RB, however, the distribution of goods is channelled through ProPharma.
PWL (BOP & Central)	Cooperative companies supplying all throughout the North Island to independent pharmacists and smaller pharmacy chains.

<u>Retailers</u>

9.8 At a retail level, the supply of personal lubricants occurs primarily through the grocery, adult retailer, pharmacy and online channels.

Grocery

9.9 The grocery channel accounts for **[CONFIDENTIAL]** of RB's and J&J's personal lubricant sales and RB estimates it accounts for around **[CONFIDENTIAL]**% of total personal lubricant sales. As the Commission is aware, and as set out below, the two supermarket chains exercise significant countervailing power over suppliers, including RB.

Adult retailers

9.10 Adult retailers primarily retail sex paraphernalia or erotica, including DVDs and magazines, sex toys and enhancement products. Adult retailers vary from small, independent stores, to larger chains, such as Peaches & Cream with 13 stores nationally. Market research has identified at least 67 physical adult retailers nationwide.[1] Adult retailers stock a very wide range of lubricant products for a range of requirements.

9.11 Adult retailers are considered to be a growing channel. For example, in the USA statistics show 13.8% growth in adult retailers from 2007 to 2012 and forecast growth of 6% from 2012 to 2017.[2] This has largely been attributed to increasing social acceptance and normalisation of sex and SWB products amongst consumers. Anecdotally, the growth of adult retailer chains such as Peaches & Cream suggests this trend towards normalisation of sex and SWB products is also strong in New Zealand.

9.12 Examples of normalisation can be seen in the widely popular viral advertising campaigns launched by Durex in Australia, for example the digital campaign advertising "Fundawear" which had 6 million views **[CONFIDENTIAL].**[3] A further example is the popularity of the "Fifty Shades of Grey"[4] book series (soon to be made into a film). In New Zealand, normalisation is apparent through the popularity of events such as the Erotica Expo, which claims to attract 100,000 attendants annually. Personal lubricants have also featured on popular group buying website Grabone, owned by media giant APN, through its Go Intimate, adults only, retail store. For example, on 3 May 2014 Grabone promoted an offer from the Gi Gi Adult Department Store for 3 100ml tubes of Wet Stuff Lubricant (Strawberry, Gold and Vitamin E) for $25.

9.13 Adult retailers are estimated to make up around **[CONFIDENTIAL]**% of all personal lubricant sales.

Pharmacy

9.14 The New Zealand pharmacy channel is made up of major pharmacy banner groups (primarily Green Cross, the owner of banner groups Life Pharmacy and Unichem) and smaller chains/independents. The use of wholesalers and banner groups gives pharmacies considerable buyer power. As described above, there are five major pharmacy wholesalers which account for **[CONFIDENTIAL]** pharmacy purchases, and hence have the ability to exert significant buyer power.

Online retailers

9.15 Sales via online stores are popular. The Internet provides very low-cost access for entrants and ease of access for consumers. Achieving ranging with an online store is relatively simple. Some competitors sell at wholesale to other retailers and also sell direct to consumers via their own websites (e.g. Astroglide, Sliquid, Pjur).

9.16 Generic retailers such as www.fishpond.co.nz offer a wide range of lubricants. Many adult retailers also operate an e-commerce store such as Peaches & Cream (www.peachesandcream.co.nz), Gi Gi Adult Department Store (www.gigi.co.nz) and Erox (www.eroxadult.co.nz).

9.17 RB estimates that there are as many as **[CONFIDENTIAL]** personal lubricant products offered online in New Zealand.[5] These products include direct substitutes for those supplied by the Parties.

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[1] See Annex 5.
[2] "Sex sells: Greater social acceptance of sex paraphernalia is driving industry growth" IBISWorld (October 2012).
[3] **[CONFIDENTIAL]**.
[4] A hugely globally successful trilogy by E.L. James, the first of which was released in mid-2011, in which anal sex and sadomasochistic acts are described in explicit detail.
[5] **[CONFIDENTIAL]**.

9.18 Online retailers benefit from a general trend of New Zealand consumers becoming more comfortable shopping online. Statistics New Zealand's most recent Household Use of Information Technology and Communication Technology Survey[6] revealed that over 54% of New Zealanders made an online purchase in the 12 months leading up to the survey (an increase of 11% from their previous survey in 2009). The greatest *proportion* was in the 25-34 year old age bracket (where 71% shopped online), whereas the greatest *increase* was 35-44 year olds (where 68% shopped online). **[CONFIDENTIAL]**. More generally, the Commission has recently accepted that consumers have an ever increasing range of ways to access content on the internet, and these ways are becoming progressively easier and more rapid.[7]

9.19 The online channel also provides an avenue for consumers to make purchases with a higher degree of anonymity. Many websites provide a promise that transactions will be treated with confidence and purchases will be discretely packaged and delivered.[8] This may give online retailers a competitive advantage vis a vis those customers who may not be comfortable purchasing personal lubricants in-store. **[CONFIDENTIAL]**.

9.20 As consumers become ever more comfortable shopping online, online's share of total sales is expected to grow. There is a substantial number of online stores offering personal lubricants. Annex 7 sets out a list of 46 such sites offering sex products in New Zealand.

Medical and healthcare

9.21 The New Zealand medical and healthcare channel consists of wholesalers of medical consumables and joint buying groups (such as healthAlliance) that on-sell to public and private hospitals, clinics, day surgeries and healthcare professionals. J&J sells a sterile lubricant suitable for clinical use through this channel, which accounted for approximately $**[CONFIDENTIAL]** in revenue in 2013, **[CONFIDENTIAL]**.

10. Recent and future industry trends

Consumer driven trends

10.1 In recent years a number of consumer trends can be identified with respect to the supply of personal lubricants in New Zealand and the broader SWB market.

(a) Demand for personal lubricants is generally growing as any remaining stigma associated with the use of personal lubricants reduces. Lubricants are no longer perceived as simply being a "problem solving" device aimed primarily at women, and are increasingly promoted as products to enhance people's sex lives and to bring additional sensations and excitement into sexual activity.

(b) The market is characterised by regular product advancements. The introduction of warming/cooling/tingling lubricants, flavoured lubricants, couples' lubricants and fertility friendly lubricants has increased the number of products being offered by various suppliers.

(c) Society generally is becoming less inhibited and more receptive to trying new experiences, including in the SWB space. This is evidenced by the availability and success of 'specialty' personal lubricants sold online and by adult retailers losing much of the stigma once associated with shopping at them. In addition, online shopping is available for consumers who may, for whatever reason, prefer to avoid purchasing at a physical store.

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[6] http://www.stats.govt.nz/browse_for_stats/industry_sectors/information_technology_and_communications/HouseholdUseofICT_HOTP2012.aspx
[7] Bauer Media Group (NZ) LP and APN Specialist Publications NZ Limited [2014] NZCC 1.
[8] Such policies can be found on the front page of www.theden.co.nz, www.peachesandcreme.co.nz, www.eroxadult.co.nz or under the privacy policy page on www.dvice.co.nz.

11. Recent consolidation in the industry

RB is not aware of any relevant mergers.

Part 3: Market Definition

HORIZONTAL AGGREGATION

12. **Relevant market**

12.1 RB considers that the relevant market is the New Zealand market for the supply of personal lubricants. Further details on demand-side and supply-side substitutability are set out below.

Demand-side substitutability

12.2 A large range of personal lubricants are available through the various distribution channels identified above. These products are differentiated by reference to a range of factors, including:

(a) base ingredient: water or silicone based;

(b) functional attributes: e.g. warming or tingling;

(c) end-use: lubricant only or '2 in 1' massage product, vaginal or anal use, single use or couples product;

(d) flavour; and

(e) target customer base.

12.3 Although products supplied in this market are differentiated, there is substitutability along the spectrum of all products such that they should be considered to fall within one product market.

12.4 Moreover, there are a range of price points at which the products are sold as demonstrated by the following table with products from different brands spread throughout the spectrum of prices.

Table 1: Comparative prices from sample skus of the various brands

			
Sylk Natural Personal Lubricant 40ml	Wet Stuff Lube – Strawberry 100g	Durex Play Lubricant Feel 50ml	System Jo H2O Sweet Pomegranate 30ml
$ 7.50[9]	$9.95[10]	$9.99[11]	$9.99[12]

[9] Pharmacydirect.co.nz
[10] Femplay.co.nz
[11] Countdown.co.nz
[12] Peachesandcream.co.nz

 K-Y Lubricant Jelly 100g $11.99[13]	 Ansell Lubricant Warm Lovin 100ml $11.99[14]	 Lifestyles Lubricant Natural 100ml $11.99[15]	 Durex Play Massage Lubricant 2in1 Gel Aloe Vera 200ml $13.99[16]
 Pjur Basic - Waterbased Lubricant 100ML $14.50[17]	 Ansell Lifestyles Liquid Lubricant Pump - 100ml $15.00[18]	 Wet Naturals - Sensual Strawberry Lubricant 3.3 oz $15.50[19]	 Wet Stuff - Vitamin E 100g $16.99[20]
 System JO - H2O 60ml $16.99[21]	 Gun Oil - Silicone Lube 60ml $17.99[22]	 Wet Flavoured Lubricant - Kiwi Strawberry 100g $19.95[23]	 Wet Stuff - Gold Lubricant 270g $19.95[24]

[13] Countdown.co.nz
[14] Countdown.co.nz
[15] Countdown.co.nz
[16] Countdown.co.nz
[17] Femplay.co.nz
[18] Femplay.co.nz
[19] Femplay.co.nz
[20] Peachesandcream.co.nz
[21] Peachesandcream.co.nz
[22] Peachesandcream.co.nz
[23] Femplay.co.nz
[24] Femplay.co.nz

 Gun Oil Force Recon 100ml $20.00[25]	 Gun Oil H2O Lube 118ml $20.99[26]	 K-Y Yours & Mine Lubricant 88ml $24.99[27]	 System JO H2O Personal Lubricant for Women 120ml $25.99[28]
 Pjur Woman - Silicone Bodyglide Lubricant 100ml $29.95[29]	 Pjur Med - PREMIUM Glide Silicone Lubricant 100ml $35.00[30]	 Durex Embrace Pleasure Gels 2 x 60ml $35.99[31]	 Wet Together - Lubricant for Couples 60ml $39.95[32]
 System JO 2 to Tango - Stimulating Lubricants $47.99[33]			

Supply-side substitutability

12.5 Supply-side substitutability further supports a market that includes all personal lubricants. The products supplied in this market require the same basic inputs, are manufactured using

25 Peachesandcream.co.nz
26 Peachesandcream.co.nz
27 Countdown.co.nz
28 Peachesandcream.co.nz
29 Femplay.co.nz
30 Femplay.co.nz
31 Pharmacydirect.co.nz
32 Femplay.co.nz
33 Peachesandcream.co.nz

the same or similar production equipment and are sold to the same downstream consumers. Competing suppliers could quickly, and at limited cost, expand/switch as needed to supply demand side substitutes for the products supplied by the Parties (to the extent they were not already supplying such products). The prevalence of third party manufacturing makes such supply-side substitution easier still.

12.6 It is also possible that the market could be wider than that for the supply of personal lubricants on the basis of supply-side substitution and include other SWB products such as:

(a) vaginal moisturisers, which are designed for everyday use for the relief of symptoms of vaginal dryness;

(b) massage oils, which are not compatible with condoms but may nonetheless be used by some consumers as a sexual lubricant; and

(c) female orgasm enhancing gels, which are not designed to reduce friction during intercourse or masturbation but rather are designed for application to the clitoris.

Geographic market

12.7 Personal lubricant products are transported globally and **[CONFIDENTIAL]**. Online sales are also common. Accordingly, RB considers the market is national.

Hospital sector

12.8 Personal lubricant products are also sold to hospitals for medical uses (e.g. for inserting medical equipment such as catheters/thermometers etc.). While K-Y sells in this channel (with its medical heritage seen as an advantage), Durex does not make any sales in this channel and **[CONFIDENTIAL]**. Accordingly, we do not consider this channel further and do not include K-Y's sales in this channel in the market shares.

13. Product differentiation

13.1 There is product differentiation in the personal lubricants market. Personal lubricants fall along a spectrum with "basic reassurance" or "medical" positioning at one end to "playful" or "adventurous" positioning at the other. For example, warming or tingling products, flavoured products and 2-in-1 massage products tend to be positioned more towards the adventurous end of the spectrum, whereas "basic reassurance" products tend to be straightforward water-based lubricants. Most suppliers of personal lubricants produce a range of products targeting different types of consumers. These products range from basic water-based lubricants to more adventurous and playful products, and to products that are highly differentiated and target very specific customer groups. Importantly, K-Y and Durex have very different product positioning, with K-Y more towards the basic reassurance or medical end of the spectrum and Durex positioned as more adventurous (discussed in further detail in Part 5).

13.2 More detail on the characteristics of the leading brands in New Zealand is set out in the competitive effects section below.

VERTICAL INTEGRATION

14. Vertical integration

14.1 The Proposed Transaction does not result in any change in the level of vertical integration in the market – in New Zealand RB will gain the K-Y brand with no additional distribution capability.

Part 4: Counterfactual

15. **Relevant counterfactual**

15.1 **[CONFIDENTIAL]**.

Part 5: Competition Analysis

EXISTING COMPETITORS

16. **Existing competitors**

16.1 There are as least 83 competing brands of personal lubricant supplied in New Zealand, see Annex 8.

16.2 Recognising the product differentiation, the following descriptions of some leading products in New Zealand are (loosely) arranged along a spectrum from more basic reassurance or "need-based" products to more adventurous products (although recognising that each manufacturer will generally have a range of products within its portfolio targeting different parts of the spectrum). Importantly, the descriptions below highlight the very different focuses of the K-Y and Durex portfolios.

K-Y

16.3 K-Y is a water-based lubricant and the longest established brand of personal lubricant. It was first introduced in 1917 for the relief of vaginal dryness in older women and was initially available as a prescription medication. Given its history, K-Y's basic products (personal lubricant jelly 100g and 50g) have maintained a reputation for use for therapeutic purposes.

16.4 The traditional "medical" or basic reassurance **[CONFIDENTIAL]**, as set out below in Table 4, the few more "adventurous" skus it has in its portfolio, **[CONFIDENTIAL]**: its Liquid Warming and Intense skus have been discontinued in New Zealand, **[CONFIDENTIAL]**.

16.5 While K-Y's marketing in New Zealand has virtually ceased in recent years, its website uses romantic and emotional themes and is targeted at a mature consumer (see www.k-y.com).

Vagisil

16.6 Vagisil is a popular personal lubricant product sold primarily through the supermarket channel in New Zealand. Its personal lubricant is aimed more at the medical/basic reassurance end of the product spectrum, with the other products in its range aimed more towards female health issues. Accordingly, it is closer in product positioning to K-Y than to Durex.

16.7 See www.vagisil.com

Sylk

16.8 Sylk is manufactured in New Zealand. Sylk is formulated to alleviate dryness, enhance sensitivity and increase sexual enjoyment.[34] It commands around **[CONFIDENTIAL]** of all pharmacy sales.

16.9 Sylk has been sold for over 20 years and is recommended by doctors, sex therapists, healthcare consultants and Family Planning Clinics in New Zealand, Australia, the USA, UK, and Europe.[35] Sylk has focused on the pharmacy and mail order channels in New Zealand, although it is also sold through Woolworths/Safeway supermarkets in Australia suggesting it constitutes a ready alternative for PEL and Foodstuffs if they thought one were needed. Its Australian share of grocery sales is **[CONFIDENTIAL]**%.

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[34] www.sylk.co.nz
[35] www.sylk.co.nz

16.10 See www.sylk.co.nz

Gun Oil

16.11 Gun Oil Personal Lubricants is a line of lubricants, produced in silicone, water-based and hybrid formulations. Gun Oil is produced by Empowered Products UK which specialise in the development, manufacture, and distribution of high-quality sexual enhancement products for men and women.[36] The Company's branded PINK and Gun Oil lines of lubricants are available in more than 21,000 retail locations in more than 30 countries.

16.12 Gun Oil (and PINK) is sold in New Zealand through adult retailers and online through broad based retailers such as fishpond.co.nz as well as specialised adult retail websites.

16.13 See www.gunoil.com

Ansell

16.14 Ansell is a well known competitor in the SWB category which operates 52 facilities in 35 countries across North America, Latin America, Europe, the Middle East, Africa and the Asia Pacific region. The company employs over 12,000 people worldwide. Ansell was founded over 100 years ago in Australia, and is listed on the Australian Stock Exchange. The company's total annual sales for the 2012/2013 financial year were NZ$1.5bn, up 10% on the previous financial year.

16.15 Ansell is the number 2 condom brand in New Zealand, with around **[CONFIDENTIAL]**%[37] market share. While comparatively small in the New Zealand personal lubricant space, it is a well-known brand which commands around **[CONFIDENTIAL]**% of the Australian grocery channel. In Australia, Ansell engages in bundled product offerings in the sale of its personal lubricant with its condom products, which is a strategy it could use in New Zealand to increase its presence in personal lubricants.

16.16 Ansell produces a range of lubricants from basic reassurance to adventurous (including massage and sensation products).

16.17 Like Sylk (and other brands), Ansell is a brand that supermarkets could easily support and quickly grow in response to any perceived need post-acquisition.

16.18 See www.ansell.com/lubricants

Astroglide

16.19 Astroglide lubricant is made in the USA by BioFilm, Inc. Astroglide personal lubricant is one of the world's top-selling personal lubricant products. Its personal lubricants range covers both the basic reassurance and feeling & intimacy categories.

16.20 Astroglide is sold in New Zealand through adult retailers and online.

16.21 See www.astroglide.com

System JO

16.22 The System JO brand of silicone and water based personal lubricants is the most popular personal lubricant brand in both the adult retailer and e-commerce channels in New

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[36] www.empoweredproducts.co.uk/pages/about-empowered-products
[37] **[CONFIDENTIAL]**.

Zealand.[38] System JO is a division of United Consortium Inc., a healthcare provider based in the USA with over 30 years' experience in the global medical market.

16.23 United Consortium entered the personal lubricants market in 1999 by developing a silicone lubricant for women suffering from vaginal dryness. In 2003 the System JO brand was born. It now boasts a vast range of products formulated to address a variety of specific needs, from personal lubricants to massage glides, stimulation gels to performance enhancers, all System JO products are designed to improve and enhance sexual experiences.[39]

16.24 See www.systemjo.com

pjur

16.25 Pjur Group (pronounced 'pure') manufactures in Germany, providing high-quality health and body care products to more than 50 countries. The company has been selling personal lubricants since 1995 and was the first producer distributing a silicone lubricant worldwide.[40]

16.26 pjur's current product range includes more than 40 health and bodycare products grouped together in six different categories, the focus being on lubricant and massage gels that are available in both silicone-based and water-based formulations. This comprehensive product range includes condoms, stimulation and delay products, and a line of hygiene products called med clean, many of which are currently available in New Zealand. pjur products are available in pharmacies, mail-order business, and erotic stores internationally.

16.27 In New Zealand pjur can be purchased through adult retailers, fishpond.co.nz, trademe.co.nz and online or physical pharmacies.

16.28 See www.pjur.com

Wet Stuff

16.29 Wet Stuff personal was first released for sale in 1987. Since then many new formulations have been added to the range.

16.30 It is produced by Gel Works Pty Ltd (Australia) and sold throughout New Zealand on online stores such as Family Planning's online store, adult retailers, grab one store etc. It is sold in Australia through Woolworths, suggesting that it could readily be stocked in New Zealand supermarkets should the supermarkets feel compelled to introduce a further competitive constraint on RB post-acquisition. Its Australian share of grocery sales is **[CONFIDENTIAL]**%.

Durex

16.31 Durex produces a range of personal lubricants that are more differentiated than those supplied by K-Y in terms of their function and/or target audience. Durex's products are targeted at consumers that are looking for a personal lubricant to enhance their sexual experience (as opposed relief of vaginal dryness). The bulk of Durex's sales are with respect to a differentiated product offering:

(a) Durex's most popular products are its Feeling and Intimacy range, consisting of its 'Massage 2 in 1' products, which are personal lubricants that are also designed for use as a massage gel. Collectively these products currently account for **[CONFIDENTIAL]**% of Durex's total sales of personal lubricants;

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[38] Based on Euromonitor data (25.04.14).
[39] www.systemjo.com/history/
[40] //www.pjur.com/en/pjur/company.html

(b) Durex's Performance range, which consists of a female 'orgasm enhancing' gel, accounts for **[CONFIDENTIAL]**% Durex's total sales of personal lubricants; and

(c) Durex's Fun and Adventure range, consisting of a warming gel, a flavoured gel and a couples product (a warming and a tingling gel). These products collectively account for **[CONFIDENTIAL]**% of Durex's total sales of personal lubricants.

16.32 All of Durex's personal lubricant products are supplied through each of the four main distribution channels. Durex also produces two "basic reassurance" lubricants - Durex Play Feel Intimate Lubricant 50g, which is similar to K-Y's basic product, and Durex Play Perfect Glide, a silicone-based lubricant. These products together account for only **[CONFIDENTIAL]**% of the value of Durex's total sales of personal lubricants in New Zealand.

16.33 See www.durex.co.nz

Wet International, Inc

16.34 Wet International, Inc. is one of the world's best-selling lines of personal lubricants and intimacy products. It is part of Trigg Laboratories which manufactures premium sexual wellness and consumer healthcare products, and was founded in California in 1989 where Wet products continue to be manufactured. Wet is currently available in 62 countries and has 80 plus products, including a large variety of personal and flavoured lubricants, flavoured heating massage lotions and aromatherapy heating massage oils.[41]

16.35 Wet is sold in New Zealand through adult retailers.

16.36 See www.stayswetlonger.com

Comparison of features

16.37 The following table provides a snapshot of the key features of each of the leading brands described above. As the table demonstrates, there is limited overlap in product focus between K-Y and Durex, being only in the basic and couples lubricants where Durex and K-Y's sales respectively **[CONFIDENTIAL]**.

Table 2: Summary of differentiated personal lubricants

	Basic	**Silicone**	**Warming/ Cooling**	**Flavoured**	**Couples**	**Massage**	**Orgasm Enhancer**
K-Y	✓				✓		
Durex	✓	✓		✓	✓	✓	✓
System JO	✓	✓	✓	✓	✓	✓	✓
Gun Oil	✓	✓	✓				
Ansell	✓	✓	✓	✓		✓	
Pjur	✓	✓	✓	✓	✓	✓	✓

[41] www.stayswetlonger.com/wetabout.php

Wetstuff	✓	✓	✓	✓			
Wet	✓	✓	✓	✓	✓	✓	✓
Sylk	✓						
Vagisil	✓						
Astroglide	✓	✓	✓	✓			
Other	✓	✓	✓	✓	✓	✓	✓

Sources: K-Y and Durex range represents those supplied to New Zealand retailers. Other brand skus sourced from company websites and are not necessarily stocked by New Zealand retailers currently.

16.38 A number of smaller producers also supply differentiated and/or niche products such as premium, organic, 'sperm-friendly', anal and oral personal lubricant lines.

17. **Market share estimates**

17.1 Given the differentiated nature of personal lubricant products, market shares are not an especially accurate indicator of market power. Indeed, the Parties only overlap at the margin due to their differentiated product offerings. However, the following table demonstrates the highly fragmented nature of the personal lubricants market in New Zealand. While K-Y and Durex **[CONFIDENTIAL]**, there will remain many strong and effective competitors across the spectrum of personal lubricant products.

17.2 Post the Proposed Acquisition the combined market share of the brands will account for **[CONFIDENTIAL]**% of the personal lubricants market. Notwithstanding that market shares through the grocery and pharmacy channels are higher, RB is of the view that the market will remain highly competitive and the Proposed Acquisition will not result in a substantial lessening of competition.

17.3 The market shares in table 3 below have been calculated with data collected from the following sources.

(a) **[CONFIDENTIAL]**.

(b) **[CONFIDENTIAL]**.

(c) **[CONFIDENTIAL]**.

Table 3: Estimated share of value of sales of personal lubricant in New Zealand by distribution channel (2013)

Company	Grocery	Pharmacy	Adult retailers	Online	Total	Total Value
K-Y	**[**					
Durex						
K-Y and Durex						
System JO						
Pjur						

Gun Oil						
Wet Stuff						
Wet						
Sylk						
Ansell						
Vagisil						
Astroglide						
Other						]
Total	**100%**	**100%**	**100%**	**100%**	**100%**	**[ ]**

18. **Constraint from existing competitors**

Strong competition will remain

18.1 **[CONFIDENTIAL]**, the combined entity will remain constrained as a result of low barriers to expansion for existing lubricant brands. While not all brands are currently available in all channels, the ability of shoppers to switch between channels, e.g. grocery to pharmacy, or to online etc, coupled with the ability of suppliers to respond to market opportunities, means that Durex will continue to face constraint from brands across the full product spectrum.

18.2 The range of lubricants produced by KY and Durex are differentiated such that there is an alternative supplier with a more similar product offering to each of the Parties. In particular, KY primarily sells basic water-based lubricants, which are similar in nature to those produced by Ansell and Sylk (widely available in supermarkets and pharmacies). By contrast, Durex primarily sells ‘2 in 1’ scented massage/personal lubricant skus that are more similar in nature to that produced by System JO and others. This will remain the case post Acquisition.

18.3 However, even when assessed within channels, the merged entity will face strong competition. As regards the grocery channel, Sylk (which commands around **[CONFIDENTIAL]**% of pharmacy sales and has **[CONFIDENTIAL]**% share of grocery channel sales in Australia) and Ansell in particular provide an obvious means for PEL and Foodstuffs to discipline an enlarged RB post-acquisition. (As discussed below, **[CONFIDENTIAL]**.) Ansell has **[CONFIDENTIAL]**% share of the grocery channel in Australia and can be expected to increase its market share rapidly should the merged entity worsen its competitive offering. While currently relatively small, Ansell is growing, particularly in some skus. For example, 2013 has seen Ansell introduce an aggressive high/low pricing strategy on its 50ml Pleasure Gels range, increasing its sales significantly. Amongst all personal lubricant skus Ansell has achieved **[CONFIDENTIAL]** in sales revenue in the year to 23 February 2014.

18.4 RB considers that Ansell’s **[CONFIDENTIAL]** is due to the major supermarket customers being **[CONFIDENTIAL]**. Post acquisition, they will likely turn to Ansell (or Sylk, see below) as their “second” supplier. In the case of Ansell, its ability to grow rapidly is further enhanced by its strength in the associated condom market.

18.5 Sylk is also in a prime position to expand should the merged entity seek to increase prices. It already commands over **[CONFIDENTIAL]**% share in the pharmacy channel and could readily expand to the supermarket channel (particularly in PEL given its presence in Woolworths and Safeway supermarkets in Australia).

No removal of a vigorous and effective competitor

18.6 The Proposed Acquisition will not remove a vigorous and effective competitor from the market.

18.7 K-Y's **[CONFIDENTIAL]**.

18.8 This **[CONFIDENTIAL]**, coupled with the focus on different ends of the product spectrum, means **[CONFIDENTIAL]**. Accordingly, the transaction **[CONFIDENTIAL]** to Durex. Indeed, at a global level, **[CONFIDENTIAL]**.[42]

18.9 **[CONFIDENTIAL]**.

Table 4: **[CONFIDENTIAL]**[43]

[CONFIDENTIAL]

18.10 As the graph shows, the 'playful' skus have **[CONFIDENTIAL]**. For example, sales of K-Y Warming Yours and Mine have **[CONFIDENTIAL]** and both K-Y Liquid Warming and K-Y Intense Gel have been discontinued for sale in New Zealand. **[CONFIDENTIAL]**. In RB's view, **[CONFIDENTIAL]** for Durex given its focus on the playful end of the product spectrum.

Key challenge is to grow the category

18.11 While Durex takes into account its competitors such as K-Y, Ansell, Sylk and others in its decision-making, **[CONFIDENTIAL]**. Durex believes there is currently significant "whitespace" in the personal lubricants segment. For example, in the US, **[CONFIDENTIAL]**.

18.12 Durex New Zealand sees a similar opportunity in **[CONFIDENTIAL]** and this will remain its focus post-acquisition. By acquiring K-Y, Durex will achieve greater scale, giving it more sales over which to spread the cost of these campaigns. Any attempt to increase prices or otherwise worsen its competitive offering would be directly contrary to its aim of developing its lubricants business and increasing the acceptance of the product.

POTENTIAL COMPETITION

CONDITIONS OF ENTRY

19. **Entry Conditions**

Low barriers to entry

19.1 The parties do not consider that there are any significant barriers to entry into the personal lubricant market, as:

(a) the absence of patents and strong presence of third party manufacturers means there are no manufacturing barriers to entry. The potential to outsource manufacturing and distribution of products significantly reduces any required sunk costs;

(b) there are no significant import barriers or quarantine hurdles – all major personal lubricant skus on the New Zealand market (aside from the Sylk brand) are manufactured overseas;

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[42] **[CONFIDENTIAL]**.
[43] Note: K-Y Intense Gel 10mL is an 'orgasm gel' not a lubricant.

(c) there are no relevant Medsafe or other medical requirements for importing personal lubricant into New Zealand[44];

(d) personal lubricants have a long shelf life and are non-fragile. They can therefore be transported long distances relatively easily and cheaply;

(e) personal lubricants are generally non-perishable and do not require temperature controlled transportation; and

(f) while an attractively branded product is important in many instances, it is not the case that brand reputation takes on the importance it might were the products contraceptives.

19.2 The lack of any significant barriers to entry is evident through the proliferation of international brands available in New Zealand.

Access to retail channels

19.3 While supermarkets in New Zealand have elected to stock only 3 brands in any volume, being Durex, K-Y and (to a lesser extent) Ansell, there are **[CONFIDENTIAL]**. Accordingly, there is nothing (aside from the supermarkets themselves) preventing any personal lubricant brand gaining (further) access to supermarket shelf space. Indeed, as described above, the likes of Sylk and Wet Stuff are stocked in Woolworths in Australia.

19.4 New Zealand pharmacies stock a wide range of personal lubricant products including the majority of the top brands (as described above) and lesser known products, such as Surgilube, Madonna, Dp, Baby4you, Id and Lubric Jelly.

19.5 Further, adult retailers and online shops stock an extremely wide range of personal lubricant products including newer, lesser known brands. By accessing a chain of adult retailers such as Peaches and Cream, a new entrant would immediately have access to 13 stores. In addition there are no significant barriers to selling personal lubricant online, direct to customers, or via a website such as www.fishpond.co.nz. As set out above, online and adult retailer sales combined account for an estimated **[CONFIDENTIAL]**% of personal lubricant sales in New Zealand.

Potential new entry

19.6 Given the array of imported personal lubricant brands available in New Zealand, new entry in the New Zealand market is not necessary in order to constrain the merged parties. Nevertheless, a new brand could enter in New Zealand or an overseas brand could contract manufacture in New Zealand if it considered it more efficient to do so.

19.7 Distribution of products for a new entrant is easy, with a large number of significant distributors and logistics providers in New Zealand that can service the supply requirements of new entrant on a national basis. Companies such as Toll, DHL have the expertise and warehousing capabilities to service the requirements of new entrant with ease.

19.8 If required, a new entrant could enlist the services of a professional third-party merchandiser, such as CSM (www.csm.co.nz) or MST (www.mst.co.nz). A third party merchandiser would ensure that the new entrant's product received the in-store support required to ensure high quality and regular maintenance of its product displays (which would enhance competitiveness in the grocery channel). CSM and MST are both experienced third party merchandisers that offer a tailored service, including plan-o-gram maintenance and ticket

[44] **[CONFIDENTIAL]**.

checks, dusting and facing up and also provide additional services such as mystery shopping, compliance checks and in-store sampling.

19.9 Private label products launched by supermarkets or pharmacies themselves would have direct access to the grocery and pharmacy supply channels respectively. In the US, there is very strong competition from private label brands, which hold approximately 15% of the personal lubricant market by dollar sales.[45]

Entry via leverage off an existing brand

19.10 Strong entry into the relevant market could easily be achieved via a range extension by an existing trusted brand in a parallel product category. Most obviously it could be achieved via a range extension by a condom brand. However, a successful brand extension could also be achieved by participants in both women's and men's health or feminine hygiene categories, which include some of the largest FMCG suppliers in the world. Such suppliers would have all necessary ingredients to enter the market including brand recognition and consumer trust, relationships with key retailers and either manufacturing capability or ready access to third party manufacturing capability.

LIKELIHOOD, EXTENT AND TIMELINESS OF ENTRY (THE LET TEST)

23. The LET Test

23.1 As described above, there is a very wide range of personal lubricant brands available in New Zealand through grocery, pharmacy, online and adult retailers. RB's competitors have the capability to expand sales quickly. The only limiting (but surmountable) factor would be achieving greater brand recognition. Some competitors may need to invest in achieving further brand recognition, which could be achieved via targeted marketing campaigns. As described in more detail below, retailers could well seek to support such a campaign if they felt as through such expansion was required to "keep RB honest". The most likely brands to expand would be Ansell, Sylk, Wet Stuff and System JO given their existing brand recognition and (with the exception of System JO) strong positioning in Australia.

COUNTERVAILING POWER OF BUYERS

24. Constraint from buyers

24.1 The two New Zealand supermarket chains (PEL and Foodstuffs) will exercise significant countervailing power over the merged entity, **[CONFIDENTIAL]**. Strong countervailing power is also held by pharmacy wholesalers, which purchase on behalf of pharmacies. Together, these customers account for around **[CONFIDENTIAL]**% of the parties' relevant New Zealand sales and any action taken to degrade the competitive offering would be met by any one of a number of responses (or threatened responses) including:

(a) reducing shelf space/promotional slots for the RB products while increasing the same for a third competitor, such as Ansell or Sylk (or Wet Stuff or System JO on the more "adventurous end");

(b) listing additional brands and offering preferential treatment to assist those competing brands to quickly become established; and/or

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[45] Should RB attempt a price rise post-acquisition, the supermarkets could launch their own private label personal lubricant products (or at least credibly threaten to do so). While there are no private label personal lubricants currently offered by supermarkets, the supermarkets have been very successful at launching other private label products in various product areas (from milk to medicines such as paracetamol and ibuprofen). The supermarkets could use a New Zealand manufacturer, such as Sylk or API, contract with an Australian manufacturer (such as Wet Stuff or Ansell) or look further afield to produce its personal lubricant products. Such a manufacturing opportunity could be offered to a company like Ansell in exchange for the increased promotion, ranging and support of the Ansell branded product.

(c) retaliating against RB in respect of other products that it supplies through these channels:

(i) **[CONFIDENTIAL]**; and

(ii) **[CONFIDENTIAL]**.

We consider these constraints in more detail below.

<u>Importance of supermarket channel</u>

24.2 Durex makes **[CONFIDENTIAL]**% of its sales through the supermarket channel. Its overall breakdown by sales channel (based on wholesale revenue received) is as follows:

Channel	**Wholesale sales revenue**	**Relevance of channel**
Pharmacy	**[**	
Supermarket		
Other channels		
Total	**]**	100.0%

Source: RB sales data

24.3 RB understands that pharmacy accounts for a slightly higher share of K-Y sales (**[CONFIDENTIAL]**%), **[CONFIDENTIAL]**.

24.4 Accordingly, both at present and post-Acquisition, the supermarket channel **[CONFIDENTIAL]**.

Supermarkets could stock additional competing brands

24.5 Should Durex attempt a post-acquisition price-rise, the supermarkets could credibly threaten to switch shelf space to another competitor, such as Ansell or Sylk.

24.6 Ansell already has a major presence in the condom segment and a significant share of the personal lubricant market in Australia (including a **[CONFIDENTIAL]**% share of the grocery channel). It has a very well known brand. Although Sylk has focused on the pharmacy and mail order channels in New Zealand, it's inclusion in the Woolworths/Safeway supermarkets range in Australia (accounting for **[CONFIDENTIAL]**% of grocery channel sales overall in Australia) suggests it is a real alternative for PEL and Foodstuffs if they thought another competitor were needed.

24.7 In addition to Ansell and Sylk, the supermarkets could stock a number of other brands. As set out above, there are many suppliers of personal lubricant products, many of which are significant companies with strong brand positions in overseas markets (including in grocery channels) that are strong in the pharmacy, adult retailer or online segments in New Zealand (such as System JO, Gun Oil, Wet Stuff and Pjur). Indeed, any one of these brands is likely to jump at any such opportunity. Indeed Wet Stuff holds an **[CONFIDENTIAL]**% share of the grocery channel sales in Australia which makes it, another obvious choice to stock in New Zealand supermarkets.

24.8 Significant expansion by such a brand would constitute a real threat to RB's personal lubricant business. Accordingly, RB would avoid "provoking" the supermarkets in any way by reducing the competitive offering in RB's personal lubricants business.

Supermarkets could leverage RB's wider product portfolio

24.9 An even more immediate tool that the supermarkets could use to "keep RB honest" is the wider RB relationship, which obviously encompasses many other products. **[CONFIDENTIAL]**.

24.10 RB estimates that, post-Acquisition (but based on 2013 figures) its personal lubricant category would account for less than **[CONFIDENTIAL]**% of its total sales to each of PEL and less than **[CONFIDENTIAL]**% of its total sales to Foodstuffs (in each case RB's revenues from FS and PEL accounted for by the combined personal lubricant business would be around $**[CONFIDENTIAL]** to $**[CONFIDENTIAL]**). On the other hand, it has some major brands, **[CONFIDENTIAL]**.

24.11 Taking a numerical example, **[CONFIDENTIAL[46,47]]**.

Ranging and shelf prominence

24.12 The supermarkets delisting (or threatening to delist) another product (or even skus within the personal lubricant range) constitutes another tool in the supermarket's arsenal, as delisting RB's range would threaten RB's overall revenues in New Zealand. Similarly, supermarkets could place RB's skus in a less favourable position as an initial response to any attempt by RB to increase price.

<u>Pharmacy banner groups and wholesalers</u>

24.13 The pharmacy banner groups and wholesalers also have significant negotiating power, with purchasing for pharmacies controlled **[CONFIDENTIAL]** companies (see 9.7 above). Sales of personal lubricants to pharmacies are **[CONFIDENTIAL]**; this will constitute only **[CONFIDENTIAL]**% of RB's total pharmacy sales. As described elsewhere, pharmacies already stock a wide range of personal lubricant brands. Any price increase by RB would result in switching sales to other brands, potential loss of shelf space or prominence and, more significantly, could jeopardise some of the $**[CONFIDENTIAL]** of sales of other products RB makes to pharmacies annually.

25. **Top buyers**

25.1 Please see Annex 9 for a list of RB's top **[CONFIDENTIAL]** customers, and Annex 10 for a list of K-Y's top **[CONFIDENTIAL]** customers.

COORDINATED MARKET POWER

26. **Characteristics of the market post-merger facilitating/impeding competition**

26.1 The relevant market does not currently show signs of co-ordinated conduct. More importantly, the acquisition does not remove any unique factors preventing co-ordination today, nor would it lead to the emergence of a new factor which would provide an incentive for co-ordination in the future.

26.2 Indeed, the market is highly fragmented and in the grocery channel, Ansell will be incentivised to vigorously expand its presence and take advantage of its current market position. Any attempt at coordination with the merged entity would increase the risk of the introduction of further brands.

EFFICIENCIES

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[46] **[CONFIDENTIAL]**.
[47] **[CONFIDENTIAL]**.

27. **Efficiencies from the merger**

27.1 Globally, RB believes the K-Y brand will benefit from RB's strong international SWB profile and innovation capabilities. The Proposed Acquisition will provide RB with greater economies of scale to succeed globally in the personal lubricants market, which it has struggled to gain traction in some jurisdictions, including the US.

OTHER FACTORS

28. **Other relevant factors**

28.1 Not applicable.

Part 6: Further Information and Supporting Documentation

29. **Details of market participants**

29.1 See Annexes 9, 10 and 11. There are no relevant trade associations.

30. **Annual reports and accounts**

30.1 See Annexes 14 and 15.

Part 7: Confidentiality

31. If you wish to request confidentiality for specific information contained in or attached to the notice, please state why you consider the information to be confidential and state the reasons for your request in terms of the criteria set out in the Official Information Act 1982.

32. Provide a separate schedule of all confidential information claimed in the application.

The Commission requires applicants to provide a separate schedule Listing all the confidential information so the Commission can process confidentiality requests quickly.

33. Provide two copies of the application. One copy must be a confidential version and the other a public version.

33.1 In the confidential version of the application any information for which confidentiality is sought must be highlighted in bold and contained in [square brackets].

33.2 In the public version the confidential information should be removed from within the square brackets, with the brackets remaining, thus [●].

A hard copy, and an electronic copy of the confidential version and the public version both in Microsoft Word format and in PDF format, should be sent to the email address: registrar@comcom.govt.nz.

For further information on the Commission's confidentiality policy and procedures, please refer to the Mergers and Acquisitions Clearance Process Guidelines.

THIS NOTICE is given by:

Reckitt Benckiser (New Zealand) Limited on behalf of Reckitt Benckiser Group Plc.

The company hereby confirm(s) that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to the applicant which is relevant to the consideration of this application/notice has been supplied; and
- all information supplied is correct as at the date of this application/notice.

The company undertakes to advise the Commission immediately of any material change in circumstances relating to the application/notice.

The confirmations and undertakings in this Declaration do not apply to the information supplied to Reckitt Benckiser's advisors by Johnson & Johnson and kept confidential from Reckitt Benckiser, highlighted blue in paragraphs 8.7, 8.8, 8.9, 9.21, 18.10 and 24.3.

Dated this day of 20

Signed by Reckitt Benckiser (New Zealand) Limited

Marc Reitsma (Country Manager):

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

or

The common seal of Reckitt Benckiser (New Zealand) Limited was affixed hereto in the presence of:

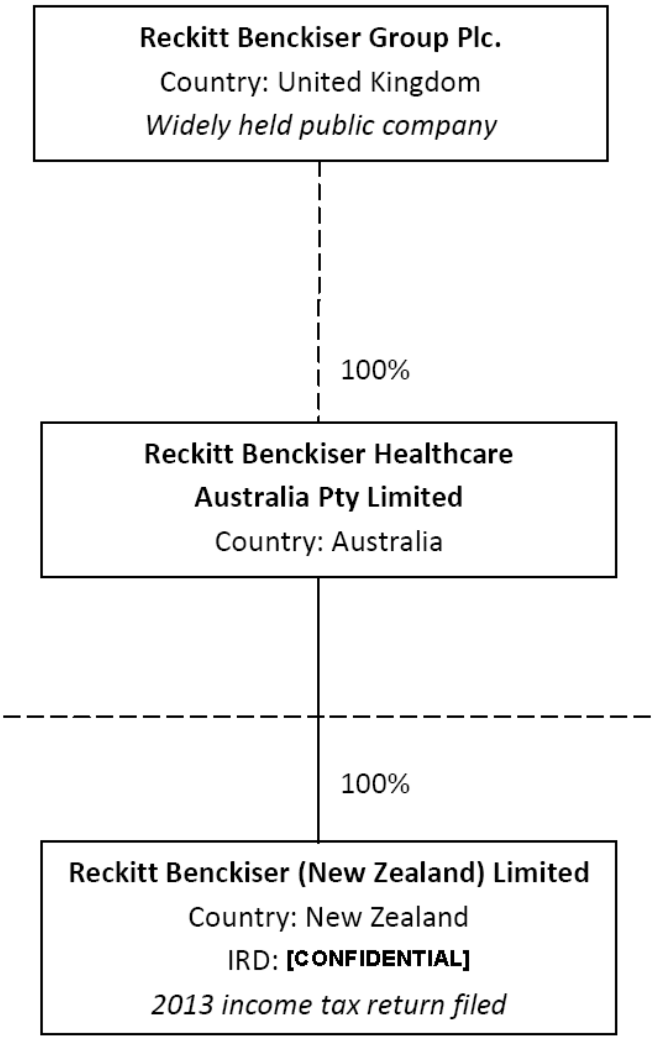
Director/Authorised signatory

WARNING

IT IS AN OFFENCE TO ATTEMPT TO DECEIVE OR KNOWINGLY MISLEAD THE COMMISSION IN RESPECT OF ANY MATTER BEFORE THE COMMISSION. ANY PERSON WHO DOES SO IS LIABLE UPON SUMMARY CONVICTION TO A FINE OF UP TO $10,000 (FOR AN INDIVIDUAL) OR $30,000 (FOR A BODY CORPORATE). REFER TO SECTIONS 103(2) AND (4) OF THE ACT.

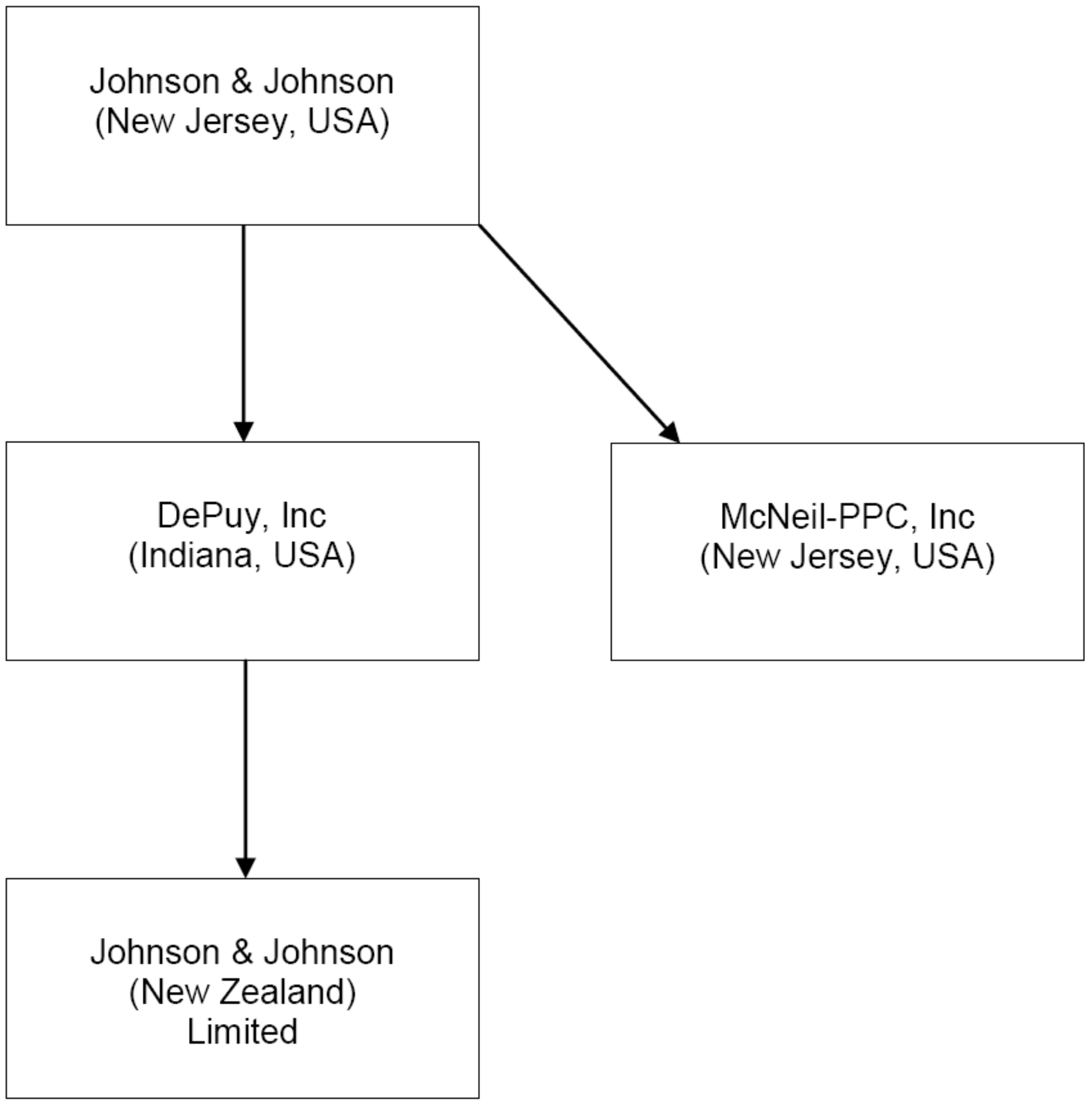
Annex 1

RB Organisation Chart



Annex 2

J&J Organisation Chart



Annex 3

Durex brand and product information

Overview

The Durex brand was acquired by RB a result of RB's acquisition of SSL International in 2010. Durex's SWB products currently include condoms, personal lubricants including massage '2 in 1' products, sexual accessories and a feminine enhancer (which is not a personal lubricant).

Durex brand identity tends to be 'cheeky' and focuses on the physicality of sex – the brand's tag line is 'Love Sex'. Durex has a male/couples-oriented focus on the enhancement space in SWB.

Durex's advertising has also begun to target same-sex couples – this year, Durex launched a campaign called "Love Same Sex", and was a gold sponsor of the Auckland LYC Big Gay Out.

Products

RB's Durex brand has 8 personal lubricant products in New Zealand being:

(a) Play Feel 50mL – a 'classic, light and silky water-based lube';

(b) Play Perfect Glide 50mL – 'an intensely silky silicone lube';

(c) Play Strawberry 50mL – a 'fruity way to sweeten up your sex life';

(d) Embrace Pleasure Gels – 2 × 60mL – 'the secret to great sex'[48].

(e) Play Stimulating Massage 2 in 1 200mL – 'with arousing Guarana';

(f) Play Massage 2 in 1 200mL – 'with soothing Aloe Vera';

(g) Play Sensual Massage 2 in 1 200mL – 'with seductive Ylang Ylang'; and

(h) Play O 15mL – 'discover the secret to amazing orgasms'[49]

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[48] Embrace is a 'couples' lubricant product – it comes with two different lubricants, one for 'him', one for 'her', each causing a different sensation when applied. A third sensation is experienced when the products are combined.
[49] Play O is a feminine enhancement gel and RB considers that it is not a personal lubricant.

Annex 4

K-Y brand and product information

Overview

The K-Y brand was launched 95 years ago as a therapeutic brand for symptomatic relief of vaginal dryness enabling better, more comfortable sex for women. It became the trusted choice to provide scientifically proven, safe, doctor recommended lubrication products.

The K-Y brand's origins were in the medical channel and the brand has traditionally been branded and marketed in a manner that sought to capitalise on its professional and trustworthy reputation. Sales of K-Y products have also been driven to some degree by endorsements and recommendations from healthcare professionals.

In 2009 J&J launched the K-Y Yours & Mine sku, which was marketed as a more 'playful' product.

Products

The K-Y brand has 4 skus available[50] for supply to consumers in New Zealand being:

(a) K-Y Jelly 100 mL;

(b) K-Y Jelly 50 mL;

(c) K-Y Sensual Silk Liquid 44mL; and

(d) K-Y Yours & Mine 2 × 44mL.

J&J sells one K-Y sku in the medical space in New Zealand – K-Y Lubricating Jelly 42g. This is a **[CONFIDENTIAL]** product that is sold only to the hospital and healthcare professional channels. **[CONFIDENTIAL]**.

J&J distributes K-Y in New Zealand through the grocery, pharmacy and medical channels. K-Y consumer skus are ranged in both major supermarkets and major pharmacy chains. K-Y products are also available in other retailers, such as The Warehouse.

[50] **[CONFIDENTIAL]**.

Annex 5

New Zealand Adult Retailers

Store name	Address
D.VICE	27 Ponsonby Rd, Auckland
The Grinder	348 Karangahape Road, Auckland City Centre, Auckland City, Auckland
Exclusive Adult Shop K Rd	460 Karangahape Road, Newton, Auckland City, Auckland
Gigi Adult Department Store	29 Broadway, Newmarket, Auckland City, Auckland
Basement Adult Shop	12 Canada Street, Newton, Auckland City, Auckland
Peaches and Cream	474 Karangahape Road, Newton, Auckland, 09 307 6882
Erox Adult Store Panmure	16A Queens Road, Panmure, Auckland City, Auckland, 09 574 5550
The Den Adult Shop	27 Barrys Point Rd, Takapuna, New Zealand, 09 486 4329
The Den Adult Concepts – Newmarket	440 Khyber Pass Road, Newmarket, Auckland, 09 520 3849
The Den Adult Concepts – K Rd	348 Karangahape Road, Auckland, 09 307 9191
Barbarellas Sexyland Adult Shop	6 Dallan Pl, Rosedale, New Zealand
DVX - Adult Entertainment Store	3081 Great North Road, New Lynn, Auckland
Kinks Adult Shop	464 Karangahape Rd, Auckland
Downtown Video	8 Commerce St, Auckland Central, Auckland
Femplay New Zealand Sex Toys	14 Airborne Road, Rosedale, Auckland
Video Expo - Glenfield	127 Target Road, Glenfield, Auckland
Video Expo - Newton	15 Gundy Street, Newton, Auckland, 09 300 1235
Video Expo – East Tamaki	24 Green Mount Dr, East Tamaki, Auckland, 09 272 3300
Video Expo – New Lynn	3100 Great North Road, New Lynn, Auckland, 09 972 1293
Video Expo – Manukau	40 Cavendish Drive, Manukau, Auckland, 09 263 8648
Video Expo – Hamilton	641 Victoria Street, Hamilton, 07 282 0086
Spice it Up Adult Shop	11 Noel Willliams Pl, Windsor Park, Auckland
Spice it Up Adult Shop – Gisborne	136 Ormond Road, Whataupoko, Gisborne
Vixen Direct	45 Stanhope Road, Mt Wellington, Auckland
Vixen Direct – Albany	18 Triton Dr, Albany, Auckland
HushHush	Te Atatu 09 834 9283
Aristocrat Adult Shop	128 Chadwick Road, Greerton, Tauranga
Adult World	503 Cameron Road Tauranga
Adult World - Hamilton	Shop 4/851 Victoria St, Hamilton
Adult World – Rotorua	1152 Euera Street, Rotorua
A Tease	313 Maunganui Road, Mt Maunganui, Tauranga
Aristocrat Adult Shop	128 Chadwick Road, Greerton, Tauranga
DVX	188 Cameron Road, Tauranga
Naughty Shop	3 Bentley Rise, Flagstaff, Hamilton

Strictly Adult	564 Victoria St, Hamilton
Peaches and Cream Wellington Megastore	120 Cuba Mall, Wellington, 04 384 3835
Peaches and Cream Dunedin	112 St Andre Street, Dunedin, 03 477 1005
Peaches and Cream Christchurch	586 Colombo Street, Christchurch, 03 365 2628
Peaches and Cream Petone	218 Jackson Street, Petone, 04 586 6101
Peaches and Cream Hamilton	370 Anglesea Street, Hamilton, 07 834 1056
Peaches and Cream Newmarket	440 Khyber Pass Road, Newmarket, 09 520 3849
Peaches and Cream Glenfield	247 Archers Road, Glenfield, 09 444 3529
Peaches and Cream Takapuna	27 Barrys Point Road, Takapuna, 09 486 4329
Peaches and Cream New Lynn	39 Totara Avenue, New Lynn, 09 827 7240
Peaches and Cream Henderson	4/253 Lincoln Road Henderson, 09 836 1792.
Peaches and Cream Papakura	72 O'Shannessey Street, Papakura, 09 296 1983
Peaches and Cream Manukau	Unit L 40 Cavendish Drive, Manukau, 09 262 3222
Peaches and Cream Head Office	247 Archers Road, Glenfield, 09 440 9430.
D.VICE Wellington	171 Willis Street, Te Aro, Wellington, 04 384 1505
D. VICE Palmerston North	93A Taonui Street, Palmerston North, 06 359 1505
Discretions Lifestyle Boutique	104 Karamu Rd North, Hastings
Be… Adult Boutique	18A Vanguard St Nelson
Weirdos Adult Store	397 Main South Road, Hornby Christchurch
Cupid Shop	459 Princes St, Dunedin
Peaches and Cream Dunedin	112 St Andrew Street, Dunedin
CocoBella	157 Dee Street, Invercargill
Wild Things Rotorua	1241 Pukuatua St, Rotorua
House of Fun	The Strand, Arcade, Whangarei 09-438 1973
Nauti Nik-Naks	9 Devon Street East, New Plymouth
The R 18 Shop	237 Cuba Street, Palmerston North
The Crystal Ball Clinic	330A Pollen St, Thames.
Sensual Supplies	3/10 Acheron Drive, Riccarton, Christchurch
Adult Selections	320 Heretaunga Street, Hastings
Peek a Boo Adult Shop	Victory Square, 143 Toi Toi Street, Nelson
Adult Specialties	264 Victoria Street, Hamilton
Playful Adult Shop	3 Keddell Street, Hamilton
Decadence	177 Courtenay Street, New Plymouth

Annex 6

[CONFIDENTIAL]

Annex 7

New Zealand e-commerce stores

Retailer Name	Website
After8	www.after8.co.nz/
Cocobella	www.cocobella.co.nz/
Wild Things	www.adultwildthings.co.nz/ss/index.php
SassC	www.sassc.co.nz/
Hushhush	www.hushhush.co.nz/
Naughty Shop	www.naughtyshop.co.nz/
NZ Adult Toys	www.nzadulttoys.co.nz/
Turn Me On	www.turnmeon.co.nz/
Countdown	http://shop.countdown.co.nz/#url=/Shop/Shelf/2095%3Fname%3Dlubricant
Family Planning	www.familyplanning.org.nz/online_shop/personal_products/lubricant
Pharmacy Direct	www.pharmacydirect.co.nz/Lubricants/
Pharmacy NZ	www.pharmacy-nz.com/Lubricants.html
Sexgear	http://sexgear.co.nz/
Fishpond	www.fishpond.co.nz/c/Health/q/Lubricant?rid=1529022720
Docs Orders	www.docsorders.co.nz/shop/Sexual+Health.html?id=qx3zjXcp&mv_pc=s
The Warehouse	www.thewarehouse.co.nz/red/catalog/pharmacy/personal-health/sexual-health
Joanna G	www.joannag.com/jgwoman/massage-lubes-and-lotions?zenid=b70r3eg5bdeaueutsgdul91gh7
Condoms Direct	www.condomsdirect.co.nz/collections/lube
Naughty Shop	www.naughtyshop.co.nz
Net Pharmacy	www.netpharmacy.co.nz/lubricants-nz
Pre-seed	www.preseed.co.nz/
Pharmacy on Web	http://pharmacyonweb.co.nz/catalogsearch/result/?q=Lubricant
NZ Online Pharmacy	http://www.nz-online-pharmacy.com/search.php?search_query=Lubricant&x=0&y=0
Condom World	www.condomworld.co.nz/
Strand Arcade Pharmacy	www.strandarcadepharmacy.co.nz/Listing/search?keywords=Lubricant&searchType=2&sortItem=7
Trademe	www.trademe.co.nz/Browse/SearchResults.aspx?searchString=Lubricant&rptpath=4798-&type=Search&searchType=7677&generalSearch_keypresses=10&generalSearch_suggested=0
Life Pharmacy	www.lifepharmacy.co.nz/search?q=Lubricant
Pay Less Pharmacy	www.paylesspharmacy.co.nz/lubricants-c-6_7_9.html
The Den	www.theden.co.nz
Dvice	www.dvice.co.nz
Femplay	www.femplay.co.nz
Getsextoys	www.getsextoys.co.nz
House of Fun	www.houseoffun.co.nz
Peaches & Cream	www.peachesandcream.co.nz
Wild Things	www.adultwildthings.co.nz/
HotVibez	www.hotvibez.co.nz/
Sextoys and Vibrators	www.wildsecrets.co.nz/
Adult Toyz	www.adulttoyz.co.nz/

CST	www.cheapsextoys.co.nz/
Basement	www.basementnz.co.nz
Gi Gi	www.gigi.co.nz
Erox	www.eroxadult.co.nz/
A Tease	www.atease.co.nz/
The Grinder	www.thegrinder.co.nz/
Strictly Adult	www.strictlyadult.co.nz/
Health Chemist	www.healthchemist.co.nz/mm5/merchant.mvc?Screen=SEARCH&Store_Code=HC&Sort=&View=grid&Search=Personal+lubricant&x=0&y=0

Annex 8

Personal Lubricant Brands Available in New Zealand ([CONFIDENTIAL])

Brand owner	**Brand**
Empowered Products Inc	Gun Oil Pink Max
United Consortium	System JO H2O
Trigg Laboratories Inc.	Wet
Pjur Group Luxemburg SA	Pjur
Gelworks	Wet Stuff
Combe Inc	Vagisil
Evolved Novelties inc.	Zero Tolerance Evolved
Sliquid, LLC	Sliquid
Reckitt Benckiser Plc	Durex
BioFilm Inc	Astroglide
J.K. Ansell Ltd	Kamasutra
B. Cumming Company	Fusion Elbow Grease
Internetmarketing Bielefeld GmbH	Waterglide
Johnson & Johnson	K-Y
Westridge Laboratories, Inc.	ID Glide Him
Body Organics	Body Organics
MD Science Lab Inc	Swiss Navy
California Exotic Novelties LLC	Up! Anal Lube
Non-Friction Products	FuckWater
Lube IT	Lube IT
Ansell Lifestyles	Ansell Lifestyles Ansell Excite
Davryan Laboratories Inc.	Probe
Fifty Shades of Grey	Fifty Shades of Grey
Blue Boy	Blue Boy
The Yes Yes Company Ltd	Yes
Wallace-O'Farrell, Inc.	Slippery Stuff
Slick Kitty	Slick Kitty
Lubexxx	Lubexxx
Bonk Lube	Bonk Lube
Topco sales	Adam & Eve
Sylk	Sylk
Rocket	Rocket
XR Brands LLC	Passion
Pure	Pure
Silicone	Silicone
Bonk Lube	Bonk Lube

Bodywise Ltd.	Liquid Silk Maximus
Fougera Pharmaceuticals Inc.	Surgilube
MHM Schreiber	Madonna
Dp	Dp
Baby 4you	PreSeed
Lubrix Jelly	Lubric Jelly
Glyde Health Pty Ltd	Glyde
Wildfire International Pty Ltd	Wildfire
O’My International	O’My
Woman Zone	Woman Zone
Intimate Organics	Intimate Organics
Marquis	Marquis
Seven Oaks Farm	Aloe Cadabra
Herbal Ignite Ltd	Herbal Ignite
Sasmar	Sasmar
Anal Eaze	Anal Eaze
BodySense	BodySense
Boston	Boston
Dare	Dare
Divine 9	Divine 9
Four Seasons Laboratories Inc	Four Seasons
Glow	Glow
Good Clean Love	Good Clean Love
Heavenly	Heavenly
Hot Caress	Hot Caress
Indian God	Indian God
Joanna G	Joanna G
Love Inc	Love Inc
LubeIT	LubeIT
Lubexxx	Lubexxx
Lubrigel	Lubrigel
Mandelay	Mandelay
Medstock	Medstock
Melt	Melt
Pipedream Products Inc	Moist
MR.THICK	MR.THICK
On	On
XR Brands LLC	Passion
Rocket	Rocket
Silk Touch	Silk Touch
Lovehoney Inc.	Sqweel
STROKE 29	STROKE 29
Touché	Touché
Paradise Products	Paradise Products
Wicked Sensual Care	Wicked

Wow	Wow
XTC	XTC

Annex 9

Durex Top Customer List

Customer	Contact	Address	Telephone	Email
[				
				]

Annex 10

K-Y Top Customer List

Customer	Contact	Address	Telephone	Email
[				
				]

Annex 11

Competitors List

Competitor	Contact	Address	Telephone	Email
Ansell Lifestyles	Ansell Limited	678 Victoria Street (Level 3), Richmond VIC 3121, Australia	T +613 9270 7270 F +613 9270 7300	Email via website portal for inquiries.
Sylk	Geneva Marketing (1998) Limited	P. O. Box 55109, Mission Bay, Auckland, New Zealand	T (09) 528 6051 F (09) 521 9014	info@sylk.co.nz
System JO	System JO Sales	2934 1/2 Beverly Glen Circle #274, Bel Air, CA 90077, USA	T +1 661 295 1700 F +1 661 295 1800	sales@systemjo.com
pjur	Alexander Giebel CEO & Founder pjur group Luxembourg S.A.	87, Esplanade de la Moselle, 6637 Wasserbillig, Luxembourg	T +352 748989 F +352 748990	info@pjur.com
Gun OIl	Scott S. Fraser CEO Empowered products	Empowered Products, 3367 W. Oquendo Rd, Las Vegas, NV 89118, USA	T +1 800 929 0407 F +1 702 216 1324	Email via website portal for inquiries.
Wet Stuff	Gel Works Pty Ltd	27 Everard St, Hunters Hill 2110, New South Wales, Australia	T +612 9879 4979 F +612 9817 0650	-
Wet	Dean Draznin Media Contact 641-472-2257 dean@drazninpr.com	Trigg Laboratories, Inc. 28650 Braxton Avenue Valencia, CA 91355-4163	T+1 661 775 3100 F +1 661 775 3131 Ext 221 - Sales	Email via website portal for inquiries.