

COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

PUBLIC VERSION

27 October 2005

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

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

PART I: TRANSACTION DETAILS

1. **Business acquisition for which clearance is sought**
 - 1.1 The proposed acquisition for which clearance is sought is the acquisition by the Reckitt Benckiser group of companies ("Reckitt Benckiser") of shares, manufacturing assets and intellectual property comprising the business known as Boots Healthcare International from Boots Group PLC and the Boots Company PLC ("Boots"). As part of these arrangements, Reckitt Benckiser Healthcare UK Limited will purchase the entire share capital of Boots Holdings (BHI) Limited ("BHI"), which is the sole shareholder in Boots Healthcare New Zealand Limited. Clearance is sought for this acquisition only to the extent it affects a market in New Zealand (section 4(3) of the Commerce Act 1986).
 - 1.2 A sale and purchase agreement was executed on Friday 7 October 2005.

1.3 [

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PERSON GIVING NOTICE

2. The person giving notice

2.1 This notice is given by:

Reckitt Benckiser plc
103 – 105 Bath Road
Slough
Berkshire SL1 3UH
United Kingdom

Attention: Christopher Roberts, Senior Vice President and General Counsel

Telephone: +44-1753-44-6676

Facsimile: +44-1753-44-6407

Email: christopher.roberts@reckittbenckiser.com

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

Buddle Findlay
Law Offices
State Insurance Tower
BNZ Centre
1 Willis Street
PO Box 2694
DX SP20201
Wellington

Attention: Jim Stevenson/Nick Crang

Telephone: +64-4-498 7311/462 0863

Facsimile: +64-4-499 4141

Email: jim.stevenson@buddlefindlay.com /
nick.crang@buddlefindlay.com

CONFIDENTIALITY

3. Requests for confidentiality

3.1 Reckitt Benckiser does not request a confidentiality order for the fact of the proposed acquisition.

3.2 Confidentiality is sought as follows:

3.2.1 Reckitt Benckiser seeks confidentiality for specific information in this notice included in square brackets and highlighted. A

copy of this notice with the confidential information deleted is provided to assist the Commission.

- 3.2.2 Reckitt Benckiser requests that the Commission make a confidentiality order under section 100 of the Commerce Act 1986 in respect of this information, and that, on the expiry of any confidentiality order that the Commission makes, the information continues to be withheld under section 9 of the Official Information Act 1982.
- 3.2.3 Reckitt Benckiser also requests that it be notified of any request made under the Official Information Act 1982 for the information, and be given the opportunity to be consulted as to whether the information remains commercially sensitive at the time that the request is made.
- 3.2.4 These requests for confidentiality are made because the information is commercially sensitive and disclosure would be likely to unreasonably prejudice the commercial position of Reckitt Benckiser. [
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DETAILS OF THE PARTICIPANTS

4. The participants

4.1 The acquirer is the Reckitt Benckiser group of companies. Contact details are the same as for Reckitt Benckiser as provided in paragraph 2.

4.2 The transferor is:

Boots Group PLC
1 Thane Road
Nottingham
Nottinghamshire
NG2 3AA
United Kingdom

Attention: David Foster, Principal Legal Adviser

Telephone: +44 115 959 1743

Facsimile: +44 115 949 3634

Email: david.foster@boots-plc.com

- 4.3 The contact address for Boots Holdings (BHI) Limited, whose share capital is being purchased by Reckitt Benckiser Healthcare UK Limited, is the same as for Boots Group PLC set out in paragraph 4.2 of this notice. The address of the Australian office of BHI, which oversees Boots' operation in New Zealand, is:

101 Waterloo Road
Macquarie Park
New South Wales 2113
Australia

Attention: Lindsay Forrest

Telephone: +61 298706000

Facsimile: +61 298706100

Email: lindsay.forrest@bhint.com

- 4.4 Correspondence and enquires in relation to Boots should in the first instance be addressed to Lindsay Forest.

5. **Interconnected or associated parties**

Reckitt Benckiser

- 5.1 The Reckitt Benckiser group comprises a large number of companies around the world. The parent company is Reckitt Benckiser plc, a UK company. Only one entity owns more than 10% of the shares of Reckitt Benckiser plc. Jon A Benckiser GMBH owns 111,105,415 shares, which is currently 15.28% of the total shares.
- 5.2 Reckitt Benckiser (New Zealand) Ltd is a wholly owned subsidiary of RB Holdings (Australia) Pty Ltd. That company is owned by Maddison Square Holdings BV of the Netherlands. Ultimately, Maddison Square Holdings BV is owned by Reckitt Benckiser plc.

Boots

- 5.3 The Boots group of companies also comprises a large number of companies around the world, including Boots Healthcare New Zealand Limited. Boots Healthcare New Zealand Limited is 100% owned by Boots Holdings (BHI) Limited (UK). Boots Healthcare New Zealand Limited owns three subsidiary companies (100% of each) – Crookes–Anestan (New Zealand) Limited, The Boots Company (New Zealand) Limited and Boots The Chemist (New Zealand) Limited. The first two companies are dormant and do not trade. On 19 September 2005 an application was submitted for liquidation of Boots The Chemist (New Zealand) Limited (this is expected to take 5-6 weeks).
- 5.4 Boots Healthcare Australia Pty Limited, the Australian BHI company, maintains a branch in New Zealand. It is intended that this branch be closed (it has become obsolete since the divestment of the medical products business to Sigma in November 2004).

6. Participants' interests in each other

- 6.1 Neither Reckitt Benckiser nor Boots, and no interconnected body corporate of either, has a beneficial interest in, or is beneficially entitled to, any shares or other pecuniary interest in the other, in so far as this could affect the New Zealand markets.

7. Links between participants and their existing competitors in each market

- 7.1 Reckitt Benckiser (New Zealand) Ltd and Boots Healthcare New Zealand Limited are both members of the New Zealand Food and Grocery Council.

8. Directors

- 8.1 None of the directors of the Reckitt Benckiser group of companies hold directorships in any other companies that are involved in the markets in which Reckitt Benckiser or Boots operate in New Zealand, or which could affect New Zealand.

9. Business activities of each participant

Reckitt Benckiser

- 9.1 The Reckitt Benckiser group was formed in 1999 as a result of the Anglo-Dutch merger of Benckiser NV with Reckitt & Coleman plc. The group is active worldwide in 180 countries in the manufacture and sale, predominantly, of household cleaning products (fabric care, surface care, dishwashing and home care products) and to a lesser extent, health and personal care products and food products markets.
- 9.2 Reckitt Benckiser's New Zealand subsidiary (Reckitt Benckiser (New Zealand) Ltd) is based in Auckland. The New Zealand subsidiary does not manufacture products. It is responsible for the marketing and distribution in New Zealand of a range of Reckitt Benckiser's products, mainly household cleaning products and some health and personal care products. Nearly all of the household cleaning products are manufactured in Australia, whereas the health and personal care or OTC products are manufactured mainly in the UK. The products are imported into New Zealand by Reckitt Benckiser (New Zealand) Ltd.
- 9.3 Reckitt Benckiser's products sold in New Zealand include a number of over-the-counter non-prescription products ("OTC products") in personal health care under a number of well-known brands. The OTC products in personal health care that Reckitt Benckiser sells in New Zealand include:

- Disprin (including Disprin Fort and Disprin Direct). These are tablets and capsules containing aspirin, and are used to treat headache, and body ache;
- Solprin, an aspirin;
- Cardiprin, an aspirin plus codeine product;
- the Lemsip range of products including:
 - Lemsip Hot Drink Powder (50mg paracetamol);
 - Lemsip Max Hot Drink Powder (1000 mg/dose paracetamol);
 - Lemsip Max with Decongestant Hot Drink Powder (1000mg paracetamol plus 12.2mg phenylephrine hydrochloride);
 - Lemsip Direct Powder (1000 mg paracetamol plus 12.2mg phenylephrine hydrochloride);
 - Lemsip Defence Lozenge, Lemsip Lozenges Orange and Lemon, and Lemsip Anaesthetic Lozenge; and
 - Dettol antiseptic and disinfectant (available in crème, liquid and wipes forms).

9.4 Once Reckitt Benckiser has imported the products into New Zealand, there are two main distribution channels: pharmacy and grocery. In the pharmacy channel, Reckitt Benckiser sells to a number of distributors, as well as directly to some hospitals and pharmacy “banner” groups, for example, Unichem. In the grocery channel, Reckitt Benckiser sells to Progressive Enterprises Limited and Foodstuffs (NZ) Limited.

9.5 In some cases, whether a product can be sold through the grocery channel is dictated by legislation (which specifies that certain products can only be sold through pharmacies. See Part IV for detail on the regulatory environment.)

9.6 More information on the business of Reckitt Benckiser can be obtained from the company’s website: www.reckittbenckiser.com

Boots

9.7 Boots Healthcare International is currently part of the Boots Group PLC and is active in 130 countries in the manufacture and sale of OTC products. It also manufactures and sells prescription (non-OTC) dermatological products in Europe.

- 9.8 Boots has five manufacturing plants worldwide. Like Reckitt Benckiser, Boots imports all of the products sold in New Zealand from overseas. There are three manufacturing plants in the United Kingdom (principally manufacturing Nurofen, Sweetex, Optex, Strepsils and Karvol), one in Germany (which manufactures Clearasil and Hermal's specialised dermatological creams) and one in Thailand (which manufactures Strepsils). Boots also uses some third party ("contract") manufacturers.
- 9.9 In New Zealand, Boots supplies OTC products under brands such as Nurofen, Strepsils, and Savlon. The OTC products in personal health care that Boots sells in New Zealand include:
- the Nurofen range of products, including analgesic tablets, capsules, and caplets, migraine pain caplets, liquid capsules, Nurofen Cold & Flu, Nurofen Plus, Nurofen for Children and Nurofen Gel;
 - Strepsils products (including Original, Honey & Lemon, Orange, Eucalyptus & Menthol, Strawberry Sugar-Free, Sugar-Free Lemon, and Strepsils Plus Lozenges, Strepsils Plus Throat Spray, Strepsils Cough Lozenges, Strepsils Dry Cough Liquid, Zinc Defence Blackcurrant, Echinacea Defence, Easy Breathing Vapour Ampoules and Easy Breathing Rub);
 - Strepfen Original Lozenges and Orange Sugar Free Lozenges; and
 - Savlon products (Antiseptic Liquid, Antiseptic Cream, Gentle Wipes, and Hygienic Moisturising Hand Wash Pump/Refill).
- 9.10 More information on Boots Healthcare International may be obtained from the Boots Group PLC website: www.boots-plc.com

Overlap

- 9.11 The only areas of overlap between the New Zealand businesses of Reckitt Benckiser and Boots are in the OTC personal healthcare markets.

**REASONS/FOR THE PROPOSAL AND INTENTIONS IN RESPECT OF
THE ACQUIRED BUSINESS**

**10. Reckitt Benckiser's reasons and intentions in respect of
Boots Healthcare International**

- 10.1 The Boots Group PLC decided that it wished to focus upon its Boots The Chemist retail pharmacy business operations and accordingly announced its intention to sell the Boots Healthcare International business in April 2005. It then conducted a confidential auction sale process for this business. Reckitt Benckiser was the successful bidder in that process.
- 10.2 For completeness, we note that it was announced in early October 2005 that Boots Group PLC had entered into a conditional agreement to merge its retail pharmacy business operations in the UK and Europe with Alliance UniChem plc. This agreement is conditional in part on Boots Group PLC's sale of BHI. This merger has no effect on New Zealand.
- 10.3 The proposed acquisition of Boots would give Reckitt Benckiser a significant opportunity to further grow its business in the important areas of health and personal products. Reckitt Benckiser intends to continue the operations of Boots and integrate the business into its own operations. The acquisition will deliver revenue growth in New Zealand to Reckitt Benckiser in respect of the branded products of both Boots and Reckitt Benckiser.

HORIZONTAL AGGREGATION

11. Markets in which there would be an aggregation of business activities

11.1 Reckitt Benckiser considers that the New Zealand markets relevant to its proposed acquisition of Boots are certain markets for OTC products. OTC products are described by the Commission in paragraphs 39 and 40 of Decision 398 (in respect of the merger of GlaxoWellcome plc and SmithKline Beecham plc, dated 1 September 2000):

OTC medicines are sold in retail pharmacies, supermarkets and some consumer good stores, directly to consumers. Some OTC medicines are classified as “pharmacy only” requiring them to be sold only by retailers holding the necessary pharmacists licence. Most OTC products in New Zealand are not subsidised.

Public and private hospitals are located throughout New Zealand. These organisations purchase both ethical and OTC products.

11.2 Further, at paragraph 67, the Commission noted:

Pharmaceutical companies in New Zealand import products and distribute them to pharmaceutical wholesalers, or direct to major consumers such as hospitals, or retail buying groups (for example the Unichem pharmacy chain).

11.3 Reckitt Benckiser considers that, for the purposes of this notice, four markets should be considered (taking account of product, functional and geographic dimensions), namely:

- the national market for the wholesale distribution of analgesics (non-narcotic and anti-pyretic);
- the national market for the wholesale distribution of cold preparations without anti-infectives;
- the national market for the wholesale distribution of throat preparations; and
- the national market for the wholesale distribution of antiseptics and disinfectants.

- 11.4 These *product* market definitions are based on the European Pharmaceutical Marketing Research Association's Anatomical Therapeutic Chemicals (ATC) classifications. The markets identified above reflect the third-level (ATC 3) classifications, which the Commission has found to be a useful initial approach to operational market definition in previous cases (for example, in Decision 398).
- 11.5 The products are distributed *nationally* by manufacturers which import and supply the products to wholesalers and retail groups (pharmacy) and hospital, as well as supermarket chains and other retailers (for those products permitted to be sold as grocery items). Reckitt Benckiser considers that the relevant markets cover both the pharmacy and supermarket distribution channels. Most consumers regularly purchase OTC products from both pharmacies and supermarkets when they require these kinds of OTC products. Many of the products are sold in both channels. Even where a particular product is sold in one channel (e.g. because it is pharmacy-only), it competes with products sold in both channels.
- 11.6 We note in our discussion of each market below, that these *product* definitions are conservatively narrow. There is evidence of some degree of substitutability between the identified markets or between these markets and other markets (i.e. possible broader market definitions), which may also be relevant to the assessment of competition.

National market for the wholesale distribution of analgesics

- 11.7 Analgesics are a group of drugs used to relieve pain and, if they contain an anti-pyretic ingredient, to reduce fever. Reckitt Benckiser's products and brands in this market are Disprin, Solprin, and Cardiprin. Boots' brand in this market is Nurofen. Other brands in this market are listed in paragraph 16.
- 11.8 Herbal or vitamin-based products designed to relieve pain also form part of this market.
- 11.9 Disprin is sold mainly through supermarkets (approximately []), with the remaining proportion sold through pharmacies. Solprin is sold through pharmacies only. Some Nurofen tablets and capsules, Nurofen Plus and Nurofen for Children are pharmacy-only medicines. Other Nurofen tablets, caplets and liquid capsules, along with Nurofen Gel, are sold through both pharmacies and supermarkets.

National market for the wholesale distribution of cold preparations

11.10 This market includes products indicated for the relief of cold and influenza symptoms, including combination products containing antihistamines with decongestants, analgesics, anti-pyretics, vitamins, antitussives and expectorants. Reckitt Benckiser's brand in this market is Lemsip. Approximately [] of Lemsip is sold through supermarkets, with the remaining proportion sold through pharmacies. Boots' product is Nurofen Cold & Flu (sold through pharmacies). Other brands in this market are listed in paragraph 16.

11.11 At present, Reckitt Benckiser is the only supplier selling a cold preparation product containing phenylephrine (a drug used to relieve nasal congestion) through supermarkets. As a result of a regulatory change (see Part IV for detail on the regulatory environment), phenylephrine products were only allowed into supermarkets for the first time this year. Historically, only single active products (that is, products with only one active ingredient) could be sold through supermarkets, but now it is possible to sell dual active products in supermarkets.

11.12 [

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11.13 The supply of cold preparations crosses over into the throat preparations market identified below. The wider market for all cold, flu and throat preparations also includes other products such as cough syrup. Not all the products within the boundaries of this wider market would be substitutable, however, various products in the wider market could be used in combination to relieve the symptoms of a cold or flu.

11.14 Herbal or vitamin-based products may also form part of this market.

National market for the wholesale distribution of throat preparations

11.15 Throat preparations include all preparations for infections of the throat, nose/throat and mouth/throat such as tablets, lozenges, drops, sprays, gargles, suppositories and medicated confectionery. Reckitt Benckiser's products and brand in this market are Lemsip (including Lemsip Defence Lozenge, Lemsip Lozenges Oranges and Lemon, and Lemsip Anaesthetic Lozenges). These are sold through both pharmacies and supermarkets. Boots' products include Strepsils (sold through pharmacies and supermarkets), and Strepfen (sold

through pharmacies). The brands of other suppliers are listed in paragraph 16.

11.16 Herbal or vitamin-based products may also form part of this market.

National market for the wholesale distribution of antiseptics and disinfectants

11.17 This market includes all dermatological antiseptics preparations for human use. Reckitt's brand in this market is Dettol, and Boots' is Savlon. The brands of other suppliers are listed in paragraph 16.

11.18 Both Dettol and Savlon come in liquid and cream forms, though Dettol is sold mostly as a liquid, and Savlon is sold mostly as a cream.

11.19 In addition, while Dettol is used as an antiseptic for personal use, it can also be used as a household disinfectant. In many supermarkets, Dettol is stocked with the household disinfectants rather than personal antiseptics. In Australia, Dettol is used more as an antiseptic than a disinfectant; however, Dettol is used widely in New Zealand both as a personal antiseptic and a household disinfectant.

11.20 If used as a disinfectant, there are many household disinfectant substitutes for Dettol, for example, Pine-o-Cleen, Jeyes and house brand disinfectants. Bleach and other cleaners with disinfectant properties are also substitutes. (The household disinfectant market is not considered relevant to this application, as no aggregation would occur in that market.)

11.21 If used as a personal antiseptic, antiseptic bandages and hand washes are also a substitute for Dettol in some circumstances, depending on the purpose for which it is used, e.g. Band Aid (marketed by Johnson and Johnson) and Purrel (marketed by Pfizer).

DIFFERENTIATED PRODUCT MARKETS

12. Differentiated or standardised product markets

12.1 The markets are characterised by product differentiation.

13. Characteristics of differentiation

13.1 There are three main bases of differentiation. One is the form of the product. Many of the products come in capsule, liquid, powder or cream form. There is a relatively extensive array of products. A second is the different levels of active ingredients. Products may be low or high dose, and in some cases products may have a single

active ingredient or multiple ones. A third is the kind of active ingredient.

- 13.2 The markets identified are largely cause-driven, whereby consumers will be driven to a particular market by whatever is causing their symptoms and then select a product from the relevant market, taking into account the available forms and active ingredients of the products. Accordingly, despite the differentiation in the products, there is a high degree of substitution.
- 13.3 As noted in paragraph 11.4, these product market definitions, taking account of issues both of product differentiation and product substitutability, are based on the third level ATC classifications. We set out market information in paragraph 16 from reputable independent industry surveys in New Zealand on the products in each of these markets.

VERTICAL INTEGRATION

14. Vertical integration between firms involved at different functional levels

- 14.1 Neither Reckitt Benckiser nor Boots are vertically integrated players in the relevant markets. The proposed acquisition will not result in vertical integration.
- 14.2 We have noted in paragraphs 10.1 and 10.2 that Boots PLC separated BHI and Boots' retail pharmacy operations for the purposes of the sale of BHI.

PREVIOUS INVOLVEMENT IN ACQUISITIONS

15. Previous involvement by participants in acquisitions

- 15.1 No Boots companies have undertaken any acquisitions in New Zealand in the last three years.
- 15.2 Reckitt Benckiser's only acquisition in the last three years that affected New Zealand was an internal re-organisation. Effective 1 January 2005, RB Holdings (Australia) Pty Ltd purchased 100% of the shares in Reckitt Benckiser (New Zealand) Limited from Maddison Square Holdings BV.

EXISTING COMPETITORS

16. Existing competitors

16.1 Supply in each of the four markets is characterised by substantial existing competitors in the form of very large international pharmaceutical manufacturing companies. Each of these major companies has wholesale distribution arms operating in New Zealand or from Australia.

16.2 The tables set out 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 relevant markets identified.

16.3 The market share data comprising these tables is derived from AC Nielsen data (which relates to the grocery channel) and IMS data (which relates to the pharmacy channel). This data is then combined to produce combined market shares (rounded to 1 decimal point) after weighting the shares in each distribution channel.

16.4 The AC Nielsen data is for the year to May 2005. The IMS data is for the year to mid-July 2005 for the analgesics, cold preparations, and throat preparations markets and for the year to mid-June 2005 for antiseptics/disinfectants. Although the data from IMS and AC Nielsen is for slightly different time periods, we do not consider that the combined market share data would differ materially if the same time period were used for the two data sets.

National market for wholesale distribution of analgesics market

16.5 The total market measured by retail sales prices is estimated as [] on an annualised basis. Analgesics market shares are:

Entity	Brands	Share		
		Overall market	Pharmacies channel	Supermarket channel
GlaxoSmithKline	<ul style="list-style-type: none"> Panadol 	[]	[]	[]
Boots Healthcare International	<ul style="list-style-type: none"> Nurofen, Nurofen Plus, Nurofen for Children, Nurofen Gel Nurolasts 	[]	[]	[]

Entity	Brands	Share		
		Overall market	Pharmacies channel	Supermarket channel
CSL	<ul style="list-style-type: none"> • Panadeine 	[]	[]	[]
Health Manufacturing Group	<ul style="list-style-type: none"> • Medco • Paracane • Paradex 	[]	[]	[]
Multichem	<ul style="list-style-type: none"> • Pacimol 	[]	[]	[]
AFT Pharmaceutical	<ul style="list-style-type: none"> • Paraped 	[]	[]	[]
Reckitt Benckiser	<ul style="list-style-type: none"> • Disprin, Disprin Fort, Disprin Direct • Solprin • Cardiprin 	[]	[]	[]
Other (Pfizer, Sigma, Brand Support, Sanofi-Aventis, Roche and others)	<ul style="list-style-type: none"> • Pamol (Pfizer) • Pain Clear (Brand Support) 	[]	[]	[]
Total (without rounding)		100%	100%	100%

16.6 In terms of the Commission's safe harbours, the three largest firm concentration ratio after the acquisition []. The difference between the pre-acquisition three largest firm concentration ratio and the same ratio post-acquisition is also small. The market share of the combined entity post-acquisition also represents only a small aggregation in both cases. This is because Reckitt Benckiser's pre-acquisition market share is only [].

16.7 Moreover, there are powerful constraints by existing competitors. In particular, GlaxoSmithKline and CSL have strong brands in this market, and established distribution channels. They could compete strongly and readily expand supply. [

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16.8 We understand that [

] There are also herbal or vitamin-based products but these are not included in the market-share table.

National market for wholesale distribution of cold preparations

16.9 The total market measured by retail sales prices is estimated as [] on an annualised basis. Cold preparations market shares are:

Entity	Brands	Shares		
		Overall market	Pharmacies channel	Supermarket channel
Pfizer	<ul style="list-style-type: none"> Codral Benadryl Actifed Broncelix 	[]	[]	[]
Reckitt Benckiser	<ul style="list-style-type: none"> Lemsip 	[]	[]	[]
GlaxoSmithKline	<ul style="list-style-type: none"> Coldrex 	[]	[]	[]
Boots Healthcare International	<ul style="list-style-type: none"> Nurofen Cold & Flu 	[]	[]	[]
Whitehall	<ul style="list-style-type: none"> Dimetapp 	[]	[]	[]
Other (Whitehall, Proctor & Gamble, Johnson & Johnson, Blackmores)	<ul style="list-style-type: none"> Vicks Formula 44 (Proctor and Gamble) 	[]	[]	[]

Entity	Brands	Shares		
		Overall market	Pharmacies channel	Supermarket channel
Total (without rounding)		100%	100%	100%

16.10 In terms of the Commission's safe harbours, the three largest firm concentration ratio after the acquisition []].

16.11 However, Reckitt Benckiser considers that there are powerful constraints by existing competitors, particularly Pfizer and GlaxoSmithKline. [] Both Pfizer and GlaxoSmithKline are very large and well resourced competitors.

16.12 []

]

16.13 There is also some crossover between some products in the cold preparations and throat preparations markets as discussed above.

National market for wholesale distribution of throat preparations

16.14 The total market measured by retail sales prices is estimated at [] on an annualised basis. Throat preparations market shares are:

Entity	Brands	Shares		
		Overall market	Pharmacies channel	Supermarket channel
Boots Healthcare International	<ul style="list-style-type: none"> • Strepsils • Stepfen 	[]	[]	[]
3M Pharmaceuticals	<ul style="list-style-type: none"> • Durotuss • Diffiam-C 	[]	[]	[]
Proctor and Gamble	<ul style="list-style-type: none"> • Vapo Drops • Vicks 	[]	[]	[]
Cadbury	<ul style="list-style-type: none"> • Throaties 	[]	[]	[]

Entity	Brands	Shares		
		Overall market	Pharmacies channel	Supermarket channel
Reckitt Benckiser	• Lemsip	[]	[]	[]
Comvita Labs	• Comvita	[]	[]	[]
Bliss Technology	• Blis K12	[]	[]	[]
Fauldings	• Betadine	[]	[]	[]
Other (Mayceys Confectionery, Lofthouse of Fleet, Roche, Crombie & Price)	• Cepacol (Roche)	[]	[]	[]
Total (without rounding)		100%	100%	100%

16.15 In terms of the Commission's safe harbours the three largest firm concentration ratio after the acquisition []

[]. The Commission's

Merger and Acquisition Guidelines state that the combined entity share under the safe harbours, where the three-firm concentration ratio is below 70%, is a market share "in the order of 40%". []

[]. In addition, there are powerful constraints by existing competitors particularly 3M Pharmaceuticals, Proctor and Gamble, and Cadbury. All these suppliers would readily be able to increase supply.

16.16 There is also some crossover between products in this market and products in the cold preparations market, as discussed above. In addition, herbal or vitamin based solutions are available, as well as others, although these are not included in the market share table.

Antiseptics and disinfectants market

16.17 The total market measured by retail sales prices is estimated at [] on an annualised basis. Antiseptics and disinfectants market shares are:

Entity	Brands	Shares
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		Overall market	Pharmacies channel	Supermarket channel
Reckitt Benckiser	<ul style="list-style-type: none"> Dettol 	[]	[]	[]
Boots Healthcare International	<ul style="list-style-type: none"> Savlon Antiseptic Liquid, Savlon Antiseptic Cream, Savlon Gentle Wipes 	[]	[]	[]
Roche	<ul style="list-style-type: none"> Bepanthen 	[]	[]	[]
AFT Pharmaceutical	<ul style="list-style-type: none"> AFT Crystacide 	[]	[]	[]
Fauldings	<ul style="list-style-type: none"> Betadine 	[]	[]	[]
Thursday Plantation	<ul style="list-style-type: none"> Thursday Plantation 	[]	[]	[]
Other (Smith & Nephew, Sanofi-Aventis, Pharmabroker Sales, Pfizer, Juvena Cosmetics and others)	<ul style="list-style-type: none"> Ponoxylan (Sanofi-Aventis) Sivazine (Smith & Nephew) Medicreme, Medipulv (Pfizer) Mebo Restore (Juvena) 	[]	[]	[]
Total (without rounding)		100%	100%	100%

16.18 In terms of the Commission's safe harbours, the concentration ratio after the acquisition [

]. Although the safe harbours are exceeded, there are powerful constraints by existing competitors, particularly Roche, AFT Pharmaceutical and Fauldings. [

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16.19 In addition, there is considerable substitution between Dettol and household disinfectants, which is a common use for Dettol, as discussed in paragraphs 11.19 and 11.20 above. There is also some substitution with antiseptic bandages and handwashes as discussed in paragraph 11.21 above. These competing products are not included in the above table.

CONDITIONS OF EXPANSION

17. Conditions of expansion

17.1 The most important market condition relevant to the ability of the existing firms to expand are regulatory controls. (See Part IV for detail of the regulatory environment.)

17.2 In the analgesics, throat preparations, and antiseptics and disinfectants markets, the products marketed by Reckitt Benckiser's and Boots' competitors meet the regulatory requirements for OTC medicines. They are capable of being sold in both pharmacies and supermarkets. Accordingly, the regulatory controls do not present a barrier (or, at least, a significant barrier) to the expansion of existing firms in these markets.

17.3 In the cold preparations market, Reckitt Benckiser is currently the only supplier selling a cold preparation product containing phenylephrine through supermarkets. It has only recently commenced supplying this product through supermarkets as a result of the recent regulatory change, [

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17.4 Branding is important to OTC products. In the analgesics, cold preparations, and throat preparations markets, Reckitt Benckiser's and Boots' competitors have strong market brands. In any case, the competitors in all the markets are strong international companies who have considerable resources to spend on marketing to build brands. Many of them are larger, internationally, than the combined Reckitts Benckiser/Boots entity.

17.5 All OTC medicines are imported from overseas. All of Reckitt Benckiser's and Boots' major competitors internationally have the capacity to readily increase production, or to divert supplies from another country, in order to supply more product to New Zealand.

18. Existing competitors capable of expanding

18.1 All of Reckitt Benckiser's and Boots' competitors in the relevant markets could readily expand or compete with the combined entity on price. All these companies are powerful and effective competitors, many of whom operate on a global scale and have very significant financial and corporate resources, and powerful consumer brands.

19. Influential conditions of expansion

19.1 Refer paragraph 17 above.

20. Time frame for supply to increase

20.1 Given the resources of the competitors in the relevant markets, the timeframe for supply to increase would be short, well within the 2 year timeframe applied by the Commission, most likely within a matter of months.

21. Possible competitive response of existing suppliers

21.1 The competitors to the merged entity are powerful, well resourced international companies. They would continue to have the ability to compete on price with the merged entity, or to increase supply (particularly those companies with currently low market shares) and the resources to spend on marketing. They would continue to place significant constraints on the merged entity.

22. Summary: extent to which the possible competitive response of existing competitors would constrain participants

22.1 As discussed above, the possible competitive response of existing competitors would place a significant constraint on Reckitt Benckiser's pricing and on any attempts to increase market share after the acquisition.

CO-ORDINATED MARKET POWER

23. Market characteristics facilitating or impeding co-ordinated behaviour

23.1 There are no market characteristics likely to facilitate coordinated behaviour in any of the four markets. This type of behaviour is constrained by the existence of significant global players actively competing internationally and locally.

23.2 Taking account of the market structure and conduct features that the Commission has identified in other decisions, the prospects of

collusion in the four markets are remote. While there is some degree of concentration of supplier companies of similar parity and size, these markets are characterised by competitive behaviour internationally and locally, as noted above. The markets are also characterised by differentiation. Dynamic technologies rather than static production technologies are present, as reflected in the competitive drive internationally for different and differentiated products. As discussed under Part IV, the entry barriers to the market are low apart from potential regulatory barriers (which are relatively low) and in any event will be further eased by the establishment of the trans-Tasman regime from 1 July 2006.

23.3 While the global markets may lack fringe competitors (some of the smaller suppliers in New Zealand could be considered “fringe” within the New Zealand markets, but they are generally large internationally) this is a consequence of the global nature and scale of pharmaceutical manufacturers, and the significance of consumer trust in brands for these personal products.

23.4 There is no history in New Zealand of anti-competitive behaviour of which we are aware in the relevant markets. As discussed under Part V, there are constraints on market power by the conduct of the acquirers, e.g. two supermarket chains.

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

24.1 Our comments under paragraph 23 are equally relevant to this heading.

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

25.1 We are not aware of any price coordination, price matching or price following by participants in any of the four markets.

26. **Acquisition will not increase the risk of co-ordinated behaviour in the relevant market(s)**

26.1 Any risk would be theoretical only and not capable of being realised given the market structure and conduct features of the four markets.

CONDITIONS OF ENTRY

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

Regulatory environment

- 27.1 The regulatory environment for OTC products (pharmacy only or grocery products) is relevant to the ability of firms to enter markets in New Zealand. Regulation of therapeutic products under the Medicines Act 1981 and Medicines Regulations 1984 is administered by the New Zealand Medicines and Medical Devices Authority (“Medsafe”), a business unit of the Ministry of Health. Medsafe applies controls through the *pre-marketing approval* of new and changed medicines (i.e. products with a pharmacological effect and used by humans primarily for a therapeutic purpose) and related products (e.g. throat lozenges) as well as *post marketing surveillance*. Pre-marketing approval, including for imported OTC products, involves the evaluation of quality, safety and efficiency data relevant to the intended purpose.
- 27.2 For new brands of OTC medicines in a category already approved in New Zealand the approval process is straight forward, and would normally only take approximately 2 months. Most potential competitors’ products would fall within existing approved categories of OTC medicines. Accordingly, while some regulatory conditions would have to be met, these are unlikely to be a significant barrier to expansion.
- 27.3 Parallel importation is prohibited by the Medicines Act 1981. The Act requires a party to hold registered specifications with the Ministry of Health for every imported product. The party holding the licence to distribute a particular product, will also register the specifications, thereby prohibiting any other party from parallel importing.
- 27.4 Currently, it would be relatively easy for an Australian manufacturer to produce, import and market a competing product. Technology is not a significant barrier to creating a new product. Sourcing a generic product from an overseas manufacturer is relatively easy. For example, the regulatory barriers are more significant, but not overly so. Under the respective regimes, specific packaging is required in each country. [

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Common Trans-Tasman regulation and a common regulator are imminent

- 27.5 A common trans-Tasman therapeutic products agency, which will replace Australia's Therapeutic Goods Administration and New Zealand's Medicines and Medical Devices Safety Authority, is intended to commence on 1 July 2006. This is seen by the Government as representing a positive step in the direction of effectively integrating the therapeutic products regulatory systems of Australia and New Zealand in respect of the regulation of medicines (including complementary medicines) and medical devices. The move is subject to implementing legislation and ratification of the Agreement for the Establishment of a Joint Scheme for the Regulation of Therapeutic Products in Australia and New Zealand.
- 27.6 The Government further considers that the new arrangements will open up the Australian and New Zealand therapeutic products markets, assist in the creation of a single market for therapeutic products, and introduce greater harmony in the regulation of those products, such as mutual recognition of labelling. It is intended to ensure that consumers have early access to new products entering the market while maintaining confidence in public health and safety.
- 27.7 Accordingly, the regulatory barriers (which are already reasonably low) are expected to become less significant after the Trans Tasman agency is established which, as noted above, is expected to be as early as 1 July 2006.

Branding

- 27.8 Branding is important to OTC products, because consumers rely on trusted brands when it comes to personal health care products that affect them intimately.
- 27.9 Nevertheless house brands are one way in which existing or new firms could either expand or enter the market. For example, there is a paracetamol tablet sold under the Signature brand through the Progressive supermarket chains. There is also a similar ibuprofen product. Signature is a well-known house brand, hence the success of this product. There is also a paracetamol tablet sold under the Unichem brand in Unichem pharmacies.

27.10 Retailers are keen to establish themselves in the personal healthcare market, so it is expected that increasing numbers of house brands will appear in future. [

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

28.1 A likely source of new entry is from house brands, for example, from Sigma Company Limited. According to Sigma's website (www.sigmaco.com.au), Sigma's business consists of a pharmaceutical division, a wholesale healthcare division, and a retail healthcare division. It is a manufacturer, a wholesale and the owner and operator of Australia's two largest pharmacy retail banners: Amcal and Guardian. Sigma recently bought Arrow Pharmaceuticals, which manufactures a range of generic products and operates in New Zealand. In addition to manufacturing products under its own brand name, it also manufactures healthcare products for retailers' house brands. Sigma has a subsidiary operating in New Zealand, Sigma NZ Limited. Sigma NZ also owns a subsidiary – Pharmacy Wholesalers (Wellington) Limited.

28.2 Mundipharma is present in the analgesics market in Australia, and Nestle and Mayne Group in the throat preparations market. These companies should be able to supply to New Zealand.

29. Influential conditions of entry

29.1 Refer paragraph 27 above.

LIKELIHOOD, SUFFICIENCY AND TIMELINESS OF ENTRY

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

30.1 We expect, particularly in respect of the house brands, that new entry could occur in a relatively short time and within the 2 year timeframe normally applied by the Commerce Commission. Within an existing approved OTC category, regulatory approval should be able to be obtained within 2 months. Arrangements for importing product and distributing it should also be able to be made within a similar timeframe.

- 30.2 The marketing required to build brand knowledge could take longer, but would certainly be feasible within 2 years.
31. **The degree of likelihood a potential entrant would consider entry at pre-acquisition prices**
- 31.1 We do not consider that the entry conditions are such that, at current prices, they would deter new entry, particularly by house brands.
32. **The degree the threat of entry is likely to cause market participants to react in a significant manner**
- 32.1 We consider that the threat of entry, particularly by house brands would likely be at a level to cause market participants to react.
33. **Conditions of entry considered influential on de novo entry**
- 33.1 The most significant conditions of entry for *de novo* entry are regulatory requirements, distribution channels and brand awareness. We discuss these above. We do not consider that brand awareness would be such an issue for a supplier seeking to introduce a brand into a market where it already has established that brand in another market. For example, a brand already established in the throat preparations markets would likely be able to quickly build trust in the cold preparations market.
34. **Timeframe for de novo entry**
- 34.1 Refer to paragraph 30 above.
35. **Extent of the possibility of de novo entrant constraining the merged entity**
- 35.1 Refer to paragraph 32 above.

PART V: OTHER POTENTIAL CONSTRAINTS

CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF SUPPLIERS

36. Suppliers to the merged entity

36.1 As noted in paragraphs 9.2 and 9.8, the OTC medicines supplied by Reckitt Benckiser and Boots are manufactured by Reckitt Benckiser and Boots themselves and, in Boots case, by some independent manufacturers. All manufacturing is carried out overseas.

36.2 Reckitt Benckiser has arrangements with various freight companies to transport their products in New Zealand.

37. Ownership of suppliers

37.1 The suppliers are owned by a range of different people.

38. Constraints from suppliers

38.1 Reckitt Benckiser is constrained by the availability and pricing of freight companies.

CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF ACQUIRERS

39. Acquirers of goods or services supplied by participants in each market identified

Grocery supermarkets

39.1 In the supermarket channel, Progressive Enterprises Limited and Foodstuffs own the major supermarket chains. They both have significant countervailing market power, and may choose to deal with a different manufacturer/wholesaler if the combined entity's prices were to increase. Progressive Enterprises Limited is owned by Foodland Australia Limited (see www.progressive.co.nz). Foodstuffs consist of three separate regionally based companies (see www.foodstuffs.co.nz).

39.2 Reckitt Benckiser notes that Woolworths Limited in Australia is currently in the process of buying Foodland Australia Limited, including its New Zealand business. Woolworths is in a strong financial position (net profit after tax \$790.5m for the year ended 26 June 2005). One of its stated priorities is to reduce costs by obtaining improved buying terms and reducing supply chain costs; both of these initiatives have the potential to exert downward pressure

on the prices Reckitt Benckiser/Boots charge for consumer healthcare products.

- 39.3 In Reckitt Benckiser's experience, the supermarket chains exert significant pressure on wholesale prices, as a result of the large volumes of product they are able to retail. They choose which products they stock, shelf space, positioning and, to some extent, promotion of the products. In addition, they sell house brands, which they can promote as an alternative to Reckitt Benckiser's/Boots' products.

Pharmacy

- 39.4 In the pharmacy channel, Pharmacy Wholesalers Limited, Pharmacy Brands Limited and Canterbury Drug Company are the main distributors. Reckitt Benckiser and Boots supply both through the distributors and directly to some hospitals or retail buying groups (e.g. the Unichem pharmacy chain).
- 39.5 Both distributors and the larger buying groups have significant weight and power. They also have the ability to market house brands (e.g. Unichem has a Unichem branded paracetamol). Changes to pharmacy ownership regulations are currently being implemented, which could increase the countervailing power of pharmacies.

40. Ownership of acquirers

- 40.1 See above.

41. Constraints from acquirers

- 41.1 See above.

This notice is given by Christopher Roberts, Reckitt Benckiser plc. I confirm that:

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

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

DATED this 27th day of October 2005

Christopher Roberts

Senior Vice President and General Counsel
Reckitt Benckiser plc

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