

COMMERCE COMMISSION

DECISION NO. 295

Determination pursuant to the Commerce Act 1986 (the Act), and in accordance with a delegation given in terms of s 105(1) of the Act, in the matter of an application for clearance of a business acquisition involving:

THE PROCTER & GAMBLE COMPANY

and

TAMBRANDS INC.

The Commission: P C Allport

Summary of Proposed Acquisition: The proposed acquisition by The Procter & Gamble Company (or a designated subsidiary company) of all the shares in Tambrands Inc.

Determination: Pursuant to s 66(3)(a) of the Act, and in accordance with a delegation granted under s 105(1) of the Act, the Commission determines to give a clearance for the proposed acquisition.

Date of Determination: 28 May 1997

AUT/BA-T20/1
M2339

MEMORANDUM

To: Peter Allport

From: Jeff Hamilton
John Preston
Jo Bransgrove

Date: 28 May 1997 (Working Day 10)

Subject: **Commerce Act 1986: Business Acquisition: The Procter & Gamble Company/Tambrands Inc.**

Working Day 8: 26 May 1997	Working Day 10: 28 May 1997
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Confidential material in this report is contained in square brackets.
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THE PROPOSED ACQUISITION

- 1 Clearance has been sought by The Procter & Gamble Company (P&G) (or a designated subsidiary company), to acquire all the shares in Tambrands Inc.
- 2 Implementation of the proposal will enable P&G to control the distribution and marketing of Tambrands' products in New Zealand. The proposed acquisition is potentially subject to s 47 of the Commerce Act 1986 (the Act) by virtue of s 4 of the Act. This is because the acquisition will be effected in the USA by a person who carries on business in New Zealand, and impacts on a market in New Zealand.

PROCEDURES

- 3 The proposed acquisition was registered on 14 May 1997 under s 66 of the Act. In terms of s 66(3) of the Act, the Commission is required to give clearance for the proposal within 10 working days, unless the Commission and the person who gave the notice agree to a time extension. A decision on the notice is due by 28 May 1997.

THE PARTIES

The Procter & Gamble Company

- 4 P&G, a company listed on the New York Stock Exchange, is engaged on a global basis in the marketing of various brands of laundry and cleaning, paper (including feminine hygiene products), beauty care, food and beverage, and healthcare products. For the year ending 30 June 1996, the company had world-wide sales of over US\$35 billion.
- 5 P&G operates in New Zealand through its subsidiary, Procter & Gamble NPD Inc, which is registered in New Zealand as an overseas company. Of relevance to the proposed acquisition is P&G's involvement in the distribution within New Zealand of feminine protection products, which the company markets primarily under the "Whisper" brand.

Tambrands Inc.

- 6 Tambrands, which is also listed on the New York Stock Exchange, manufactures a range of tampon products. These products are marketed predominantly under the "Tampax" brand in over 150 countries, with global sales amounting to US\$662 million. In New Zealand, Tambrands' products are distributed by Hilton Bonds NZ (1991) Ltd (Hilton Bonds) under an exclusive distribution agreement. Hilton Bonds, which is owned ultimately by Sara Lee Corporation, USA, is also

involved in the manufacture and supply of hosiery, and the importation and supply of women's intimate apparel.

THE RELEVANT MARKET

Market Definition

- 7 In the notice, the applicant submits that the proposed acquisition will result in aggregation of market share in New Zealand for feminine protection products, which include tampons and pads/liners.
- 8 While some consumers will have a preference for using one product, and not the other, in this report we propose to define the relevant product market as that for feminine protection products when assessing the likely competitive impact of the proposed acquisition.

Functional and Geographic Markets

- 9 The relevant functional market is wholesaling, and the geographic market is New Zealand.

Conclusion on Market Definition

- 10 We conclude that, for the purpose of analysing the competition implications of the proposed acquisition, the relevant market is that for the wholesale distribution in New Zealand of feminine protection products.

COMPETITION ASSESSMENT

Statutory Considerations

- 11 Section 66(3) of the Act, when read in conjunction with s 47(1) of the Act, requires the Commission to decline to give clearance to a proposed acquisition if it is not satisfied that the proposed acquisition would not result, or would not be likely to result, in a person acquiring or strengthening a dominant position in a market.

Existing Competition

- 12 P&G's involvement in the feminine protection products market in New Zealand is confined to the distribution of pads and liners, which are marketed principally through the "Whisper" brand. The company accounts for around [] of sales of pads/liners, and about [] of sales of all feminine protection products.
- 13 Tambrands is involved in the distribution of tampon products mainly under the "Tampax" brand. These products are currently supplied through Hilton Bonds in accordance with a distribution agreement. On the basis of information supplied by the applicant, Tambrands accounts for about [] of tampon sales in New Zealand, and approximately [] of the feminine protection products market.
- 14 Johnson and Johnson NZ Ltd (Johnson & Johnson) supplies tampon products, pads and liners primarily under the "Stayfree" and "Carefree" brands. The company is the largest supplier of feminine protection products in New Zealand, with a market share of about []. Johnson & Johnson accounts for about [] of tampon sales, and around [] of sales of pads and liners.
- 15 Carter Holt Harvey Ltd (CHH) is the other major supplier of pads, liners and tampons, which it markets under the "Libra" brand. It imports these products from a company in Australia which is owned jointly by CHH and SCA Mölnlycke

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of Sweden. In addition, CHH produces some feminine protection products at a plant in Auckland which are sold under generic labels. The company's overall share of the feminine protection products market is estimated to be about []. CHH's market shares in relation to tampons and pads/liners are estimated to be around [] and [] respectively.

- 16 The balance of feminine protection products is distributed mainly under generic labels by the supermarket companies.
- 17 As noted in para 15, the only feminine protection products which are manufactured in New Zealand are certain generic labels made by CHH. All remaining generic brands, and all proprietary brands available on the New Zealand market, are imported into the country from various overseas manufacturers. The products are distributed by wholesalers, such as P&G, for resale to consumers by the major supermarket operators (eg the Foodstuffs groups of companies, Woolworths NZ Ltd, and Progressive Enterprises Ltd), other grocery outlets (including variety stores such as Deka and K Mart), and pharmacies.

Market Shares

- 18 The applicant has provided the following market share estimates for feminine protection products, which are based on data compiled by AC Nielsen:

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% (Approx)
Value Shares

P&G []
] 100

Entry/Expansion Conditions

19 As noted above, virtually all feminine protection products are imported into New Zealand. There is no duty on such products, and no other import restrictions in force. However, entry into this market would involve a substantial financial outlay. Additionally, a period of several years is likely to be required to successfully launch a new brand in the market.

Assessment of the Likely Impact of the Proposed Acquisition

20 Implementation of the proposed acquisition would result in some horizontal aggregation of market share in the feminine protection products market, with P&G increasing its market share to around []. It would also lead to P&G controlling a leading tampon brand, a product which to date has not been marketed on the New Zealand market by P&G.

21 We consider that the combined entity would face an effective constraint from Johnson & Johnson and CHH, both of which have well established brands, and strong market shares. As noted above, Johnson & Johnson's market share is around [], while CHH's share is about []. Additionally, some competition would be provided by the suppliers of generic labels.

22 Staff consider that a prospective entrant into this market is likely to face substantial barriers to entry when launching a new brand. However, it is our view that entry barriers are unlikely to be raised following implementation of the proposed acquisition, such that dominance would be acquired or strengthened.

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Further, there would appear to be no major impediments facing those existing suppliers with an established brand presence from increasing their current market shares, in the event prices were raised above the competitive level.

- 23 The analysis in this report is based on a single market for feminine protection products. However, we do not consider that our conclusions would change if the markets were defined separately into tampons and pads/liners. If so, implementation of the proposal would lead to a bare transfer of market power, without any significant change in the existing market circumstances.

CONCLUSION

- 24 We conclude that, for the reasons outlined above, the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in the market for the wholesale distribution in New Zealand of feminine protection products.

RECOMMENDATION

- 25 We recommend that, pursuant to s 66(3)(a) of the Act, and in accordance with a delegation granted under s 105(1) of the Act, that clearance be given to the proposed acquisition.

Investigator

Chief Investigator

Manager

**DETERMINATION TO GRANT NOTICE OF CLEARANCE:
THE PROCTER & GAMBLE COMPANY/TAMBRANDS INC.**

I agree/disagree with the recommendation.

I am satisfied/not satisfied that implementation of the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

Accordingly, pursuant to s 66(3)(a) of the Commerce Act 1996 (the Act), and in accordance with a delegation given under s 105(1) of the Act, I hereby give clearance for The Procter & Gamble Company (or a designated subsidiary company) to acquire all of the shares in Tambrands Inc.

In terms of s 66(5) of the Act, this clearance shall expire twelve months after the date of this notice. Brief particulars of this clearance will appear in the Commission's public register.

This clearance is given only to the proposed acquisition described in the notice seeking clearance dated 13 May 1997.

Dated at Wellington this day of 1997

P C Allport
Deputy Chairman