

**Notice seeking clearance for Henkel to acquire certain
Earthwise assets**

12 April 2023

Public version

EXECUTIVE SUMMARY

- 1 Henkel seeks Commerce Act clearance to acquire the Earthwise brand and business from Earthwise Group.
- 2 In assessing this application, the Commerce Commission will look at whether the proposed transaction is likely to substantially lessen competition in any New Zealand market. In doing so the Commission will be asking whether Henkel will be materially less constrained in the future by actual and potential rivalry if it acquires the Earthwise intellectual property at issue.
- 3 This clearance application explains why the proposed transaction will not change competitive pressure in any way. The application does so by recording that consumers in affected wholesale laundry detergent, laundry aid and toilet cleaner markets – being essentially Foodstuffs and Woolworths – have extensive options:
 - 3.1 These nationwide supermarket chains have significant countervailing buying power to negotiate wholesale grocery prices, as the Commission recently found in its market study report and its *Life Health Foods* decision.
 - 3.2 And those supermarkets have many other competing suppliers to choose from:
 - (a) In laundry detergents there is: Unilever; Ecostore; PZ Cussons; Eco Planet; Macro; other Woolworths and Foodstuffs home brands; and the other supply options we detail in this application.
 - (b) In laundry aids there is: Reckitt; SC Johnson; Ecostore; Eco Planet; and the other supply options we detail in this application.
 - (c) In toilet cleaners there is: SC Johnson; Reckitt; Pental; Ecostore; Eco Planet; and the other supply options we detail in this application.
- 4 On top of those significant competitive constraints, we observe that Henkel and Earthwise do not place material competitive constraint on each other. Earthwise focuses on winning shelf space from other suppliers of environmentally-friendly household products, like Ecostore, Eco Planet, Macro and many others. Henkel, on the other hand, competes most closely with global chemical and consumer goods companies, like Unilever, PZ Cussons, Reckitt and so on.
- 5 In these circumstances, Henkel sees no prospects of the proposed transaction lessening competition in any New Zealand market.

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NOTICE SEEKING CLEARANCE

The Registrar
Mergers and Acquisitions
Commerce Commission
PO Box 2351
WELLINGTON

The Applicant seeks clearance for a business acquisition under section 66 of the Commerce Act 1986.

CONTACT DETAILS

Applicant for clearance

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[HENKEL AND EARTHWISE CONFIDENTIAL INFORMATION]

[HENKEL CONFIDENTIAL INFORMATION]

[EARTHWISE CONFIDENTIAL INFORMATION]

PARTIES AND TRANSACTION DETAILS

Henkel

- 1 Henkel AG & Co KGaA is a German multinational chemical and consumer goods company, operating in New Zealand via its subsidiary Henkel New Zealand Limited (both referred to as **Henkel**).
- 2 Henkel operates in New Zealand's laundry and home care grocery segment by importing and wholesaling:
 - 2.1 *Cold Power, Dynamo* and *Fab* branded laundry detergents;
 - 2.2 *Sard* branded laundry pre-wash; and
 - 2.3 *Bref* branded toilet cleaner.
- 3 Henkel sources those products through its supply chain set-up in the Australasian region (including toll manufacturers).
- 4 Henkel entered the New Zealand market in 2015 when it acquired the *Cold Power, Dynamo, Fab* and *Sard* brands from Colgate-Palmolive and, in doing so, gained access to shelf space in Foodstuffs' and Woolworths' supermarkets around New Zealand.¹ Henkel launched *Bref* in New Zealand in 2016.
- 5 [].²

Earthwise Group

- 6 Earthwise Group Limited (**Earthwise Group**) is a private, family-owned company with its majority shareholder and managing director, Jamie Peters, actively involved in the business's day-to-day operations.
- 7 Earthwise Group manufactures eco-friendly consumer goods locally at its Auckland manufacturing facilities.
- 8 Earthwise Group has three brands, which are:
 - 8.1 *Earthwise* branded laundry detergents, pre-wash, toilet cleaner, dishwasher detergents and multi-purpose cleaners;
 - 8.2 *Nourish* branded hair care, personal wash and baby care products; and

¹ <https://www.reuters.com/article/henkel-kqaa-mergers-colgate-idUSFWN0Y209520150512>

² [].

8.3 *Glow Lab* branded skin care, hair care, personal wash and air care products.

Only Earthwise branded products are the subject of this transaction. []

9 Earthwise Group also currently has a contract manufacturing relationship with Woolworths for its eco-friendly laundry detergent brand, *Macro*.³ The Earthwise-Woolworths manufacturing relationship is not affected by this transaction (see further detail below).

Transaction details

10 Henkel seeks clearance under s 66 of the Commerce Act 1986 to acquire the Earthwise brand and business from Earthwise Group (the **proposed acquisition**), comprising the intellectual property in the Earthwise name, logo, bottle and formulas, the Earthwise goodwill and relevant Earthwise business records (**Earthwise**).

11 Details of the proposed acquisition are set out in the parties' 1 April 2023 Sale and Purchase Agreement. The SPA and other transaction documents bringing about the proposed acquisition are enclosed in **Schedule A**.

12 The upshot of the proposed acquisition is that, post-completion, Henkel would have the right to sell Earthwise cleaning products in New Zealand, Australia and potentially other overseas markets.

13 [].

14 Henkel is **not**, though, acquiring Earthwise Group's Auckland manufacturing facilities.

15 Earthwise Group will continue to own and operate that factory:

15.1 to carry out transitional manufacturing for Henkel for an agreed period;

15.2 to produce and grow its own *Nourish* and *Glow Lab* product range; and

15.3 to contract manufacture for Woolworths' *Macro* cleaning products.⁴

Restraint of trade

16 For completeness, as part of Henkel entering into the SPA and to protect the goodwill of the intellectual property it proposes to acquire, Earthwise Group agrees

³ <https://pactgroup.com/news/pact-group-supports-woolworths-launch-of-sustainable-product-range/>

⁴

[]

not to be concerned with "Specified Businesses" – other than to produce *Macro* – for [] without Henkel's approval. The Specified Businesses are fully defined in the SPA but, in broad terms, the restraint prevents Earthwise Group being involved in products similar to those that are the subject of the sale for the specified period.

- 17 That restraint of trade will come into effect once the SPA completes.
- 18 Henkel does not seek separate Commerce Commission approval for the restraint of trade. These clauses are, of course, a common mechanism to give buyers short-term assurance that the assets they are acquiring will not be significantly de-valued by vendors immediately using their existing knowledge and relationships to undermine the acquired IP. But Henkel acknowledges that the restraint of trade is part of the "factual" the Commission must assess the proposed acquisition against and, so, Henkel outlines the clause in this section.
- 19 For the reasons we discuss in this clearance application, Henkel is confident that the proposed acquisition, coupled with the restraint of trade, will not substantially – let alone slightly – lessen competition for laundry detergents, pre-wash products, toilet cleaners or any other product in New Zealand.
- 20 The short point is, with or without the proposed acquisition, wholesale customers will have many rival cleaning products to choose from. And, it follows, that these firms have many manufacturing options available to them in New Zealand and abroad.
- 21 []

STRUCTURE OF THIS CLEARANCE APPLICATION

- 22 This clearance application:
- 22.1 explains the commercial rationale for the transaction;
 - 22.2 records the factual and counterfactual; and
 - 22.3 assesses the proposed acquisition's effect on the three markets that Henkel and Earthwise both operate in, being New Zealand's:
 - (a) laundry detergent market;
 - (b) pre-wash market; and
 - (c) toilet cleaner market.
- 23 In doing so, the application focuses on laundry detergents given Henkel and Earthwise are most prominent in this product market and the Commission

understandably focused on laundry detergents in its pre-application discussions with the parties.

- 24 Henkel's conclusions for why the proposed transaction does not SLC in New Zealand's laundry detergent market apply equally to pre-wash and toilet cleaner markets.

COMMERCIAL RATIONALE FOR TRANSACTION

Henkel rationale

25 [].

26 [].

Earthwise Group rationale

27 [].

28 [].

29 [].

FACTUAL AND COUNTERFACTUAL

- 30 Taking a conservative competition law approach, Henkel submits that the proposed acquisition is best assessed against a status quo counterfactual; with that counterfactual reflecting Earthwise Group retaining the Earthwise brand.
- 31 That counterfactual would capture the most competitive market scenario for Commerce Act purposes, simplifying the Commission's analysis.
- 32 [].
- 33 []. []⁵ [].

⁵ [].

LAUNDRY DETERGENTS

PRODUCT BACKGROUND INFORMATION

- 34 Laundry detergents are used in washing machines or handwashing processes to clean clothes.
- 35 Most laundry detergents comprise all or some of the following **ingredients**:
- 35.1 **Surfactants** dissolve fat and dirt. A surfactant is an amphiphilic molecule: Its hydrophilic head is attracted to water and its hydrophobic tail to fat and dirt. When a surfactant molecule gets in contact with stained clothes, the hydrophobic tail interacts with the fatty stain while the hydrophilic head interacts with water. The result of those opposite attractions is that the surfactant lifts fat and dirt from fabrics, dissolves it and transports it away. Surfactants are usually anionic or nonionic and can be of petrochemical and natural origin. The main feedstock for natural-based surfactants is palm oil that is usually certified by, for instance, the Roundtable on Sustainable Palm Oil.
- 35.2 **Builders** make detergents more effective, like sodium carbonate and/or sodium silicate. Builders reduce the water hardness by removing mineral ions like calcium and magnesium ions which would otherwise react with surfactants to precipitate on fabrics and would make stains harder to remove. Builders can also help remove stains by dispersing them.
- 35.3 **Bleaches** oxidize bleachable colored stains and help in their removal. Bleaches also act against microorganisms like bacteria and viruses and provide hygienic cleanliness. The most common source of bleach is sodium percarbonate, usually used in combination with a bleach activator such as TAED (tetraacetylenediamine). Bleach gets activated on contact with water, so they are only used in solid detergents such as powders or bars.
- 35.4 **Enzymes** are biomolecules that act on specific types of stains. Typically, proteases, amylases and cellulases are used as enzymes. Proteases catalyze the breakdown of proteinic stains such as egg, blood, grass, cocoa etc. Amylases catalyze the breakdown of starch-based stains such as pasta, potatoes, rice etc. Cellulases have a different function; they provide whiteness and more brilliant colors to garments by smoothing cellulosic fibers like cotton or rayon, and their blends with other fibers. Enzymes are of natural origin and fully biodegradable.
- 35.5 **Polymers** are performance ingredients for special purposes. The most common uses for polymers are as dye transfer inhibitors (DTI) or as soil

release polymers (SRP). Dye transfer inhibitors are able to capture loose dye from the washing liquor before it can settle on other fabrics in the wash, as many fabrics come with badly fixed dye that should not discolor the rest of the washload. Soil release polymers settle especially on synthetic fibers like polyester or polyamide (nylon). These polymers form a protective layer, so that stains that occur on the fabric after the wash are removed more easily in the next wash.

- 35.6 **Optical brighteners** make fabrics look whiter. Optical brighteners absorb on fabrics and convert invisible UV light into visible blue light. By doing this, optical brighteners compensate the yellowing of fabrics and improve their whiteness appearance. Optical brighteners are usually part of universal detergents but not of color detergents, as they might shift the color impression of light pastel colors.
- 35.7 **Perfumes** are an important aspect to the freshness of a fabric. The fresh scent of a fabric is an important signal for consumers at all stages of the washing process that the laundry job has been properly accomplished. Perfumes usually consist of head notes that are released within several minutes, heart notes that are released within several hours, and base notes that are released within several days.
- 36 Detergents come in liquid or powder **form**. These products can be dosed by the consumer using the bottle cap or a scoop, or they can be pre-dosed like caps, sheets or bars.
- 37 Consumers' ultimate choice of laundry detergent comes down to personal preference, as modern washing machines are able to operate with any type of laundry detergent.
- 38 Henkel invests significantly in **research and development** to develop laundry detergents to meet consumers' needs around the world. That development reflects the three main aspects most relevant to consumers: the performance of a detergent on stains and dirt; the product's price; and product stewardship which comprises all safety, health and environment related aspects along with the compliance with applicable legislation.
- 39 Henkel competes with chemical and consumer goods firms around the world, including Unilever, Procter & Gamble, PZ Cussons, Reckitt and Kao Corporation, to invent and manufacture laundry detergents to meet different consumers' primary price-quality demands.

40 Indeed, consistent with consumers caring primarily about laundry detergent quality, Consumer NZ recently ranked the effectiveness of New Zealand's different detergents as follows (top 30):⁶

	Score⁷	Price⁸	Size	Product⁹	Manufact.
1	91	\$6.49	1kg	<i>Persil (P): with a touch of comfort</i>	Unilever
2	88	\$8.00	1kg	<i>Persil (P): original powder</i>	Unilever
3	74	\$14.29	1.8L	<i>Dynamo (L): professional oxi plus</i>	Henkel
4	74	\$6.00	1kg	<i>Ecostore (P): extra clean</i>	Ecostore
5	73	\$12.50	350g	<i>Dynamo (C): professional discs</i>	Henkel
6	71	\$16.00	1.8L	<i>Dynamo (L): odour eliminating</i>	Henkel
7	69	\$10.99	1.8L	<i>Dynamo (L): sensitive free & clear</i>	Henkel
8	68	\$9.80	900ml	<i>Dynamo (L): 7 actions in 1</i>	Henkel
9	68	\$14.45	1.8L	<i>Persil (L): odour eliminator</i>	Unilever
10	66	\$9.99	1L	<i>Persil (L): with a touch of comfort</i>	Unilever
11	65	\$10.00	1L	<i>Persil (L): original liquid</i>	Unilever
12	61	\$8.00	1kg	<i>Persil (P): sensitive powder</i>	Unilever
13	59	\$3.49	1kg	<i>Pams (P): ultra concentrate</i>	Foodstuffs
14	55	\$5.00	1kg	<i>Surf (P): 5 in 1 sensitive</i>	Unilever
15	53	\$5.99	1kg	<i>Eco Planet (P): fragrance free</i>	Eco Planet
16	53	\$6.99	1kg	<i>Ecostore (P): lemon</i>	Ecostore
17	53	\$12.50	1L	<i>Persil (P): sensitive</i>	Unilever
18	52	\$7.99	1.8L	<i>Cold Power (L): clean & fresh</i>	Henkel
19	52	\$5.99	1kg	<i>Eco Planet (P): gardenia & aloe</i>	Eco Planet
20	52	\$6.00	1kg	<i>Ecostore (P): ultra sensitive</i>	Ecostore
21	52	\$1.49	500g	<i>Reflect (P): tiger lily w softener</i>	PZ Cuzzons
22	51	\$2.99	1kg	<i>Surf (P): 5 in 1 tropical</i>	Unilever
23	50	\$5.00	1kg	<i>Earthwise (P): ultrasensitive</i>	Earthwise
24	51	\$6.00	1L	<i>Cold Power (L): advanced clean</i>	Henkel
25	49	\$8.00	1L	<i>Ecostore (L): geranium & orange</i>	Ecostore
26	49	\$8.00	1L	<i>Ecostore (L): ultra sensitive</i>	Ecostore
27	48	\$4.90	1kg	<i>Macro (P): geranium & musk</i>	Woolworths
28	47	\$5.00	1kg	<i>Earthwise (P): orange & eucalyptus</i>	Earthwise
29	43	\$3.99	750ml	<i>Eco Planet (L): extra sensitive</i>	Eco Planet

⁶ <https://www.consumer.org.nz/products/laundry-detergents/review>

⁷ Consumer NZ's score "is the average of 10 scores for stain removal [across]: everyday grime; collar & cuff stains; tomato; grass; olive oil; make-up; engine oil; chocolate ice cream; baby food; blood". <https://www.consumer.org.nz/products/laundry-detergents/how-we-test>

⁸ As reported by Consumer NZ.

⁹ (P) for powder, (L) for liquid and (C) for capsules.

30	43	\$3.99	750ml	<i>Eco Planet (L): gardenia & aloe vera</i>	Eco Planet
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- 41 Those tests show many different laundry detergent manufacturers produce products that are high quality, with – according to Consumer NZ – Henkel and Unilever leading the way.
- 42 In addition to typical price-quality conscious consumers, there are consumers who may consider purchasing environmental or “eco-focused” laundry detergents.
- 43 Ecostore, Earthwise, Eco Planet, Macro (Woolworths), Living Green and others target those eco-conscious customers by producing “natural and plant-based” products as their names, packaging and product descriptions demonstrate:

Ecostore¹⁰	Macro¹¹	Earthwise¹²	Eco Planet¹³	Living Green¹⁴
				
“Our most powerful, plant-based laundry powder with PlantActive™ enzymes”	“Naturally derived cleaning power ingredients”	“Naturally effective without the use of harsh chemicals”	“Our plant and mineral based laundry powder”	“Made from certified natural plants and minerals”

- 44 These eco-friendly products are typically produced from plant-based, renewable, chemicals rather “classic” chemicals which are often crude-oil based.
- 45 Henkel wishes to expand its laundry detergent range to target eco-conscious consumers by developing Earthwise’s brand in New Zealand and Australia.

¹⁰ <https://ecostore.com/nz/ultra-power-3-in-1-laundry-powder/>

¹¹ <https://www.countdown.co.nz/shop/productdetails?stockcode=119273&name=macro-laundry-powder-geranium-musk>

¹² <https://earthwise.co.nz/earthwise-laundry-powder-orange-eucalyptus/>

¹³ <https://ecoplanet.co.nz/>

¹⁴ <https://www.livinggreen.co.nz/pages/how-we-started>

How laundry detergent sales are made

- 46 Henkel and Unilever import laundry detergents to New Zealand, typically from other countries in the region (Australasia).
- 47 New Zealand laundry detergents can also be manufactured locally from ingredients that are easy to source.
- 48 Ecostore manufactures and packs its products in its Auckland factory.¹⁵ Eco Planet's laundry detergents are "Kiwi Made".¹⁶ Earthwise and Macro products are currently produced at Earthwise's Auckland factory. And Living Green is "proud to be NZ Made".¹⁷
- 49 Laundry detergent importers/manufacturers typically wholesale their products to retailers which on-sell them to grocery customers at a marked-up price.
- 50 In New Zealand that reality means the vast majority of laundry detergents are sold to Foodstuffs and Woolworths, the country's two dominant supermarket chains. (Indeed, []).
- 51 Henkel estimates at least 95% of retail laundry detergents are sold by Foodstuffs and Woolworths given consumers purchase laundry detergents on a need-to-buy or promotion driven basis as part of "shopping missions" to New Worlds, Countdowns and Pak 'n Saves around New Zealand.
- 52 With that grocery footprint, Foodstuffs and Woolworths can use their substantial buyer power to negotiate very sharp wholesale prices by, among other tactics, threatening to give shelf space to other suppliers, removing a brand altogether if their terms are not met or delisting a supplier's other products.
- 53 The Commission's recent grocery market study report (**Grocery Report**) describes that dynamic in detail.¹⁸
- 54 For present purposes, Henkel records the Grocery Report's following findings apply to laundry detergent suppliers in this country:

54.1 [].¹⁹

¹⁵ <https://ecostore.com/nz/our-story/>

¹⁶ <https://ecoplanet.co.nz/>

¹⁷ <https://www.livinggreen.co.nz/>

¹⁸ <https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-retail-grocery-sector#projecttab>

¹⁹ [].

54.2 [].²⁰

54.3 [].²¹

55 [].

56 [].

57 [].

58 [].²²

59 It is against that context that Henkel has offered, and will continue to offer, its laundry detergent products to Foodstuffs and Woolworths on highly competitive terms. Henkel has positive relationships with both supermarkets and has not tried, and could not try, to price above competitive levels because of the significant buyer power both firms hold.

Relevance of market shares against that trading environment

60 It follows that industry market shares are, to a large extent, dictated by Foodstuffs' and Woolworths' stocking decisions.

61 If Foodstuffs and Woolworths decided, by way of example, to stop ranging Earthwise's laundry detergents in favour of, say, Ecostore, Eco Planet, Living Green or their own home brand eco-friendly products, then that decision would, of course, have a corresponding negative effect on Earthwise's "market shares".

62 The corollary is that firms with low or nil "market shares" could easily and quickly expand on the back of securing Foodstuffs' and/or Woolworths' shelf space.

63 It follows that laundry detergent manufacturers with Foodstuffs and Woolworths shelf space are highly constrained by firms on the outside looking in, despite those outsiders potentially not recording high market shares on retrospective data points.

64 Indeed, the Commission was alive to this reality in recently approving Sanitarium-owned *Life Health Foods* acquiring *Chalmers Organics* in circumstances where "Life Health Foods and Chalmers are the two largest suppliers of tofu to the major grocery retailers".

²⁰ [].

²¹ [].

²² <https://www.newsroom.co.nz/foodstuffs-deletes-nz-seafood-brands-to-make-way-for-more-imports>

65 In clearing that merger, the Commission observed:²³

"The Commission found that there are several smaller manufacturers of tofu who currently supply the major grocery retailers and other speciality retailers, and if encouraged, could increase their supply of tofu to these retailers"

[...]

"Further, most tofu is sold through the major grocery retailers. Foodstuffs and Woolworths hold significant buyer power and are able to prevent unjustified price increases from the merged entity through their ability to source tofu from competing suppliers"

[...]

"Our investigation identified a number of recent entrants, particularly from overseas, in the supply of meat-alternative products which will constrain the merged entity"

66 Henkel respectfully records those findings equally apply to laundry detergent suppliers.

67 That said, unlike New Zealand's tofu industry, Henkel and Earthwise are not close to being Foodstuffs' and Woolworths' two largest laundry detergent suppliers. Henkel and Earthwise's combined share of grocery retail sales is just []%.

Existing laundry detergent options

68 In this section we profile what laundry detergent suppliers are available to retailers, in particular Foodstuffs and Woolworths, outside of Henkel and Earthwise.

69 We do so by:

69.1 identifying the 11 different laundry detergent importers/manufacturers that Foodstuffs and Woolworths currently stock;

69.2 identifying laundry detergent manufacturers other local retailers stock; and

69.3 identifying an Australian laundry detergent supplier that could easily expand into New Zealand on the back of a Foodstuffs and/or Woolworths supply agreement.

70 In the round, it is clear that all retailers have many laundry detergent suppliers to play off against each other during bilateral commercial negotiations to secure







²³ <https://comcom.govt.nz/case-register/case-register-entries/life-health-foods-nz-limited-and-chalmers-organics-limited/media-releases/life-health-foods-cleared-to-acquire-chalmers-organics>

competitive wholesale prices. Against that reality, Henkel submits the proposed acquisition would not substantially lessen competition.

Foodstuffs and Woolworths existing laundry detergent suppliers

71 Beyond Henkel and Earthwise, Foodstuffs and Woolworths stock 11 different laundry detergent suppliers between them.²⁴

1. Unilever. Unilever is a global consumer goods company and New Zealand’s largest laundry detergent supplier, accounting for over 60% of this country’s sales. Unilever closed its Petone manufacturing plant in around 2015 and now imports all laundry detergent into New Zealand from its overseas factories in Australia, Vietnam and China.²⁵

Woolworths examples ²⁶		
 <p>Surf Laundry Powder 5 In 1 Sensitive</p>	 <p>Persil Front & Top Loader Laundry Liquid Sensitive 2L \$10.00 / 1L</p>	 <p>Persil Front & Top Loader Laundry Powder Ultimate</p>
Foodstuffs examples ²⁷		
<p>Surf Front & Top Loader 5 In 1 Tropical Laundry Liquid 2l</p> 	<p>Surf 5 In 1 Sunshine Citrus Laundry Powder 1kg</p> 	<p>Persil Front & Top Loader Sensitive Laundry Liquid 4l</p> 

2. Ecostore. Ecostore develops, manufactures and packs household cleaners, laundry, body care, skincare, baby care and oral care products at its Toitū net







²⁴ Based on searches of Foodstuffs and Woolworths’ supermarket websites on 15 November 2022.

²⁵ <https://www.stuff.co.nz/business/industries/9608507/A-look-back-at-Unilever-Petone>

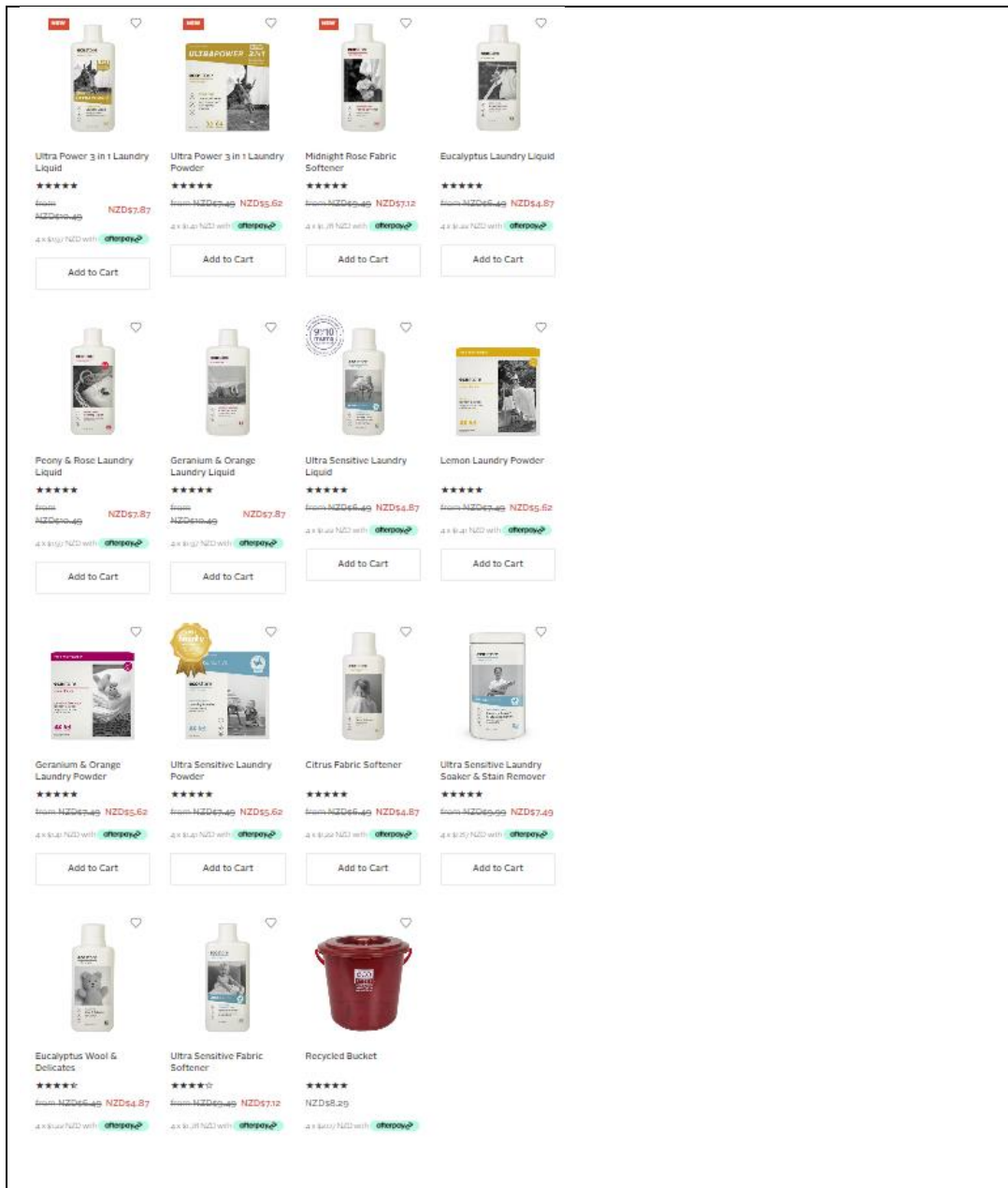
²⁶ At 15 November 2022 from <https://www.countdown.co.nz/shop/browse/household/laundry>

²⁷ At 15 November 2022 from: <https://www.paknsave.co.nz/shop/category/kitchen-dining-and-household/laundry>; <https://www.newworld.co.nz/shop/category/kitchen-dining-and-household/laundry?pg=1>

carbon-zero-certified factory in Auckland.²⁸ Ecostore laundry detergents are sold locally and exported to Australia.

Woolworths examples		
 <p>Ecostore Laundry Powder Ultra Sensitive</p>	 <p>Ecostore Laundry Liquid Geranium & Orange</p>	 <p>Ecostore Laundry Liquid Ultrapower 3 In 1 Citrus Fresh</p>
Foodstuffs examples		
<p>Ecostore Geranium & Orange Laundry Liquid 1l</p> 	<p>Ecostore Ultra Sensitive Fragrance & Colourant Free Laundry Powder 2kg</p> 	<p>Ecostore Ultra Sensitive Fragrant & Colourant Free Laundry Liquid 2l</p> 
<p>Other Ecostore products in range: https://ecostore.com/nz/shop/household/laundry/</p>		

²⁸ <https://ecostore.com/nz/our-story/>



3. PZ Cussons. PZ Cussons is a global manufacturer of personal healthcare products and consumer goods.²⁹ In May 2020, PZ Cussons and DKSH³⁰ signed an exclusive distribution agreement to “advance renowned international brands in New Zealand”, including laundry detergent *Reflect*. Speaking on that agreement, DKSH’s Managing Director said “it is a privilege to partner with PZ Cussons, and we are excited to expand the presence of their brands in the New

²⁹ <https://www.pzcussons.com/our-brands/>

















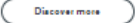

































³⁰ DKSH advertises itself as “the leading Market Expansion Services provider for fast moving consumer goods”.

Zealand market".³¹ Indeed, PZ Cussons' is a significant supplier of laundry detergents to Woolworths' Australia and Coles.

Foodstuffs examples		
Reflect Front Top Loader Black Wash Laundry Liquid 1l 	Reflect Front Top Loader Violet Rose Laundry Powder 4kg 	
PZ Cussons full product range stocked, for instance, in Woolworths' Australia:³²		


³¹ <https://www.fmcqbusiness.co.nz/dksh-signs-exclusive-agreement-with-pz-cussons-for-nz/>

³² <https://www.woolworths.com.au/shop/browse/household/laundry?pageNumber=1&filter=Brand>

 <p>Radiant Whites Or Colours Laundry Liquid Detergent 2L</p> <p>\$20⁰⁰ \$10.00 / 1L</p> <p>Add to cart </p> <p>Save to list </p>	 <p>Radiant Mixed Colours Laundry Liquid Detergent 2L</p> <p>\$20⁰⁰ \$10.00 / 1L</p> <p>Add to cart </p> <p>Save to list </p>	 <p>Radiant Whites Or Colours Laundry Detergent Washing Powder 2kg</p> <p>\$20⁰⁰ \$10.00 / 1KG</p> <p>Add to cart </p> <p>Save to list </p>	<p>SAVE \$11.00</p>  <p>1/2 Price</p> <p>Radiant Advanced+ Ultra Power Laundry Liquid Detergent 1.8L</p> <p>\$11⁰⁰ \$6.11 / 1L</p> <p>Was \$22.00</p> <p>Add to cart </p> <p>Save to list </p>	<p>PRICES DROPPED</p>  <p>Radiant Whites Or Colours Laundry Detergent Washing Powder 4kg</p> <p>Was \$30 05/10/2022</p> <p>\$23⁰⁰ \$5.75 / 1KG</p> <p>Add to cart </p> <p>Save to list </p>	<p>Shop on the go with the Woolworths app</p>  <p>Browse specials, create shopping lists and track your orders</p> <p>Discover more </p>
 <p>Radiant Mixed Colours Laundry Detergent Washing Powder 2kg</p> <p>\$20⁰⁰ \$10.00 / 1KG</p> <p>Add to cart </p> <p>Save to list </p>	<p>SAVE \$11.00</p>  <p>1/2 Price</p> <p>Radiant Advanced+ Hygienic Wash 6-in-1 Laundry Liquid Detergent 1.8L</p> <p>\$11⁰⁰ \$6.11 / 1L</p> <p>Was \$22.00</p> <p>Add to cart </p> <p>Save to list </p>	<p>SAVE \$5.50</p>  <p>1/2 Price</p> <p>Radiant Black & Dark Laundry Liquid Detergent Black Wash 1L</p> <p>\$5⁵⁰ \$5.50 / 1L</p> <p>Was \$11.00</p> <p>Add to cart </p> <p>Save to list </p>	<p>SAVE \$11.00</p>  <p>1/2 Price</p> <p>Radiant Advanced+ Cleans & Softens 5-in-1 Laundry Liquid Detergent 1.8L</p> <p>\$11⁰⁰ \$6.11 / 1L</p> <p>Was \$22.00</p> <p>Add to cart </p> <p>Save to list </p>	<p>SAVE \$11.00</p>  <p>1/2 Price</p> <p>Radiant Advanced+ Ultra Power Laundry Detergent Washing Powder 1.8kg</p> <p>\$11⁰⁰ \$6.11 / 1KG</p> <p>Was \$22.00</p> <p>Add to cart </p> <p>Save to list </p>	<p>SAVE \$11.00</p>  <p>1/2 Price</p> <p>Radiant Advanced+ Cleans & Softens 5-in-1 Laundry Detergent Powder 1.8kg</p> <p>\$11⁰⁰ \$6.11 / 1KG</p> <p>Was \$22.00</p> <p>Add to cart </p> <p>Save to list </p>
<p>SAVE \$11.00</p>  <p>1/2 Price</p> <p>Radiant Advanced+ Cold Water 6 In 1 Liquid Front & Top Loader 1.8L</p> <p>\$11⁰⁰ \$6.11 / 1L</p> <p>Was \$22.00</p> <p>Add to cart </p> <p>Save to list </p>	 <p>Radiant Capsules Active Clean 28 Pack</p> <p>\$20⁰⁰ \$47.62 / 1KG</p> <p>Add to cart </p> <p>Save to list </p>	<p>PRICES DROPPED</p>  <p>Radiant Brilliant White Sharpener Front & Top Loader Liquid 4L</p> <p>Was \$30 23/08/2022</p> <p>\$23⁰⁰ \$5.75 / 1L</p> <p>Add to cart </p> <p>Save to list </p>	<p>SAVE \$7.25</p>  <p>1/2 Price</p> <p>Radiant ReFill Laundry Liquid Front & Top Loader 1.5L</p> <p>\$7²⁵ \$4.83 / 1L</p> <p>Was \$14.50</p> <p>Add to cart </p> <p>Save to list </p>	 <p>Radiant 3 In 1 Colour Care 28 Pack</p> <p>\$20⁰⁰ \$47.62 / 1KG</p> <p>Add to cart </p> <p>Save to list </p>	

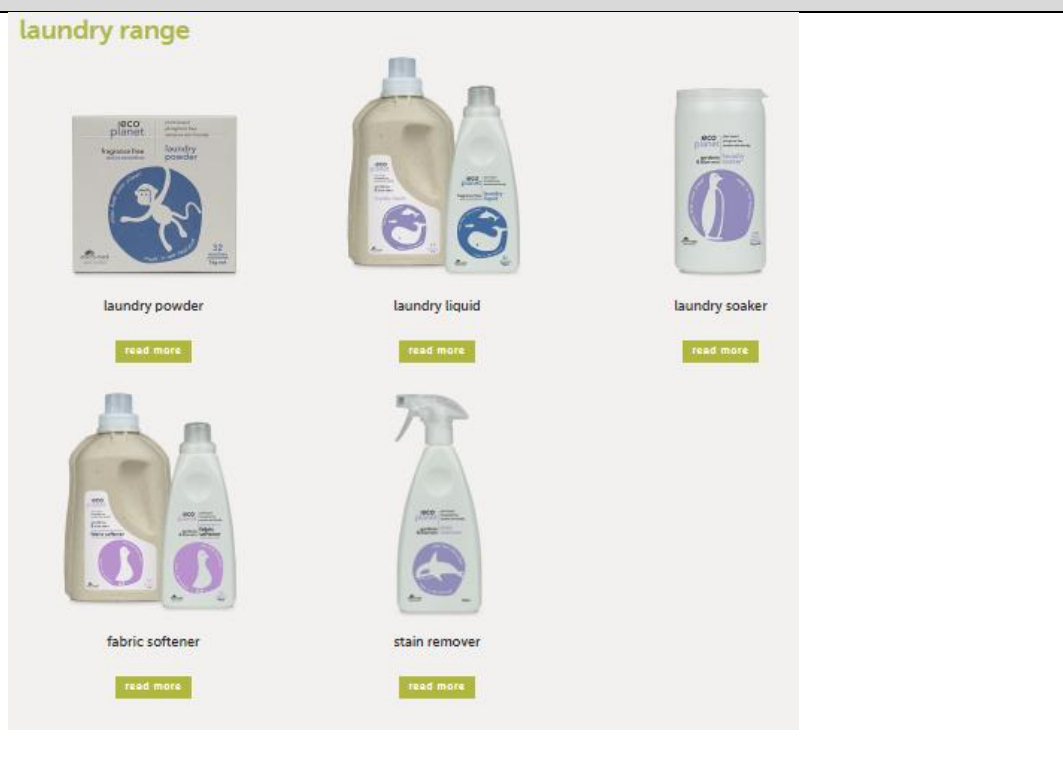
4. **Eco Planet.** Eco Planet is owned by Quantum Pacific Limited, a New Zealand-owned consumer goods company that produces dishwashing detergents (*Active*), laundry detergents (*Eco Planet*) and steel cleaning products (*Ceraclen*). Quantum Pacific's *Active* range of dishwashing products are available at all Woolworths and Foodstuffs supermarkets. And Henkel believes Quantum Pacific could similarly supply Foodstuffs and Woolworths with its full range of *Eco Planet* laundry detergents, and new products, if the supermarkets offered it shelf space.

Foodstuffs examples

<p>Eco Planet Gardenia & Aloe Vera Laundry Liquid 2l</p> 		
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Other Eco Planet products in range: <https://ecoplanet.co.nz/>

laundry range













The image displays five Eco Planet laundry products arranged in two rows. Each product is shown with its name and a 'read more' button below it.

- laundry powder:** A white box with a blue circular logo featuring a stylized figure. Below the box is the text 'laundry powder' and a green 'read more' button.
- laundry liquid:** Two bottles, one larger and one smaller, both with white caps and labels. Below them is the text 'laundry liquid' and a green 'read more' button.
- laundry soaker:** A white cylindrical container with a blue circular logo. Below it is the text 'laundry soaker' and a green 'read more' button.
- fabric softener:** Two bottles, one larger and one smaller, both with white caps and labels. Below them is the text 'fabric softener' and a green 'read more' button.
- stain remover:** A white spray bottle with a blue circular logo. Below it is the text 'stain remover' and a green 'read more' button.

5. Living Green. Living Green is a local laundry detergent importer/manufacturer having spotted a gap in the market eight years ago for “products that did what they said and said what they did”.³³ Living Green offers a large range of natural consumer goods products, including laundry detergent, multipurpose cleaners, toilet cleaner and dishwashing liquid.

Woolworths examples




³³ <https://www.livinggreen.co.nz/pages/how-we-started>

 <p>Living Green Laundry Liquid Organic Mint & Eucalyptus</p>	 <p>Living Green Laundry Liquid Eucalyptus & Mint</p>		
<p>Other Living Green laundry detergents in range: https://www.livinggreen.co.nz/</p>			
 <p>Certified Natural Wood and Delicates with Organic Mint and Eucalyptus</p> <p>View options</p>	 <p>Certified Natural Fabric Softener with Organic Rose Geranium</p> <p>View options</p>	 <p>Certified Natural Laundry Liquid with Organic Aloe Vera and Lavender</p> <p>View options</p>	 <p>Certified Natural Laundry Liquid with Organic Eucalyptus and Mint</p> <p>View options</p>
 <p>Ultra Sensitive Low Allergy Certified Laundry Liquid</p> <p>View options</p>	 <p>Ultra Sensitive Low Allergy Certified Laundry Powder</p> <p>View options</p>	 <p>Certified Natural Laundry Powder with Organic Eucalyptus and Mint</p> <p>View options</p>	 <p>Certified Natural Laundry Powder with Organic Aloe Vera and Lavender</p> <p>View options</p>



6. Re•stor. Re•stor is a New Zealand consumer goods supplier that “create[s] alternatives for a modern home that eliminate single-use plastics and consciously conserve resources ... [by] removing the 90%+ water that makes up traditional laundry and cleaning liquids and concentrating them into easy-to-use and affordable new formats”.³⁴ Re•stor produces pre-measured laundry detergent sheets and multipurpose surface cleaners in recycled bottles. Re•stor’s products are sold at Countdown, The Warehouse and Fresh Choice around New Zealand.

Woolworths examples

³⁴ <https://restor-home.co.nz/sustainability>

 <p>Restor Concentrated Laundry Detergent Sheets Fresh Linen</p>	 <p>Restor Concentrated Laundry Detergent Sheets Tropical Breeze</p>	 <p>Restor Concentrated Laundry Detergent Sheets Sensitive Unscented</p>
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7. Will&Able. Will&Able’s value proposition is “providing eco cleaning products with true 360 degrees recycling, closing the loop, and not just lip service, to ensure positive job creation for people with disabilities, so members can be sure their money is going towards a cause with integrity that focuses on ecological sustainability, social impact and ethics”.³⁵ The company produces a range of eco-friendly laundry detergents, dishwashing detergents, multipurpose cleaners and toilet cleaners in recycled plastic bottles.

Woolworths examples		
 <p>Will & Able Eco Laundry Liquid Jasmin & Bergamot</p>		
Foodstuffs examples		
<p>Will & Able Jasmin & Bergamot Eco Laundry Liquid 1l</p> 		
Other Will & Able laundry products in range:		

³⁵ <https://willandable.co.nz/blogs/news/our-ethical-and-eco-story>






















8. Earth Choice. Earth Choice is made by Natures Organics, a large Australian-based manufacturer and distributor of a wide range of environmentally friendly consumer goods products.³⁶ Earth Choice laundry detergents are primarily distributed in Australia, but a limited range is available in New Zealand. Given Earth Choice is widely stocked in Australian supermarkets (see below), Henkel anticipates it could equally enter the New Zealand market at scale on the back of a Foodstuffs or Woolworths supply contract.


Foodstuffs examples		
	<p>\$0.40/100ml</p> <p>3.99 /L</p> <p>Add to list</p> <p>Ways to purchase</p> <p>*Product availability updated in real time</p>	
Earth Choice is widely stocked by Woolworths Australia³⁷		

³⁶ <https://naturesorganics.com.au/>

³⁷ <https://www.woolworths.com.au/shop/search/products?searchTerm=earth%20choice>


 <p>Earth Choice Top & Front Loader 1L</p> <p>\$3.00 \$3.00 / 1L</p> <p>Add to cart</p> <p>Save to list</p>	<p>everyday lowest</p> <p>All your Christmas needs sorted</p> <p>90% Free shipping from 2021</p> <p>Free Ship Xmas</p> <p>All your Christmas needs sorted</p> <p>Shop Now</p>	 <p>Earth Choice Dishwashing Liquid 1L</p> <p>\$2.35 \$0.24 / 100ML</p> <p>Add to cart</p> <p>Save to list</p>	 <p>Earth Choice Dishwashing Tablets 42 Pack</p> <p>\$17.80 \$0.42 / 1EA</p> <p>Add to cart</p> <p>Save to list</p>	 <p>Earth Choice Toilet Cleaner Liquid Aque 750ml</p> <p>\$3.50 \$0.47 / 100ML</p> <p>Add to cart</p> <p>Save to list</p>	 <p>Earth Choice Fabric Softener 1L</p> <p>\$2.70 \$2.70 / 1L</p> <p>Add to cart</p> <p>Save to list</p>	 <p>Earth Choice Antibacterial All Purpose Surface Spray 600ml</p> <p>\$4.00 \$0.67 / 100ML</p> <p>Add to cart</p> <p>Save to list</p>	<p>Earth Choice Antibacterial All Purpose Surface Spray 600ml</p> <p>\$2.00 \$0.33 / 100ML</p> <p>Add to cart</p> <p>Save to list</p>
<p>SAVE \$1.00</p> <p>Special</p>  <p>Earth Choice Dishwashing Liquid Green Tea & Lime 500ml</p> <p>\$2.25 \$0.45 / 100ML</p> <p>Was \$3.25</p> <p>Add to cart</p> <p>Save to list</p>	 <p>Earth Choice Top & Front Loader Liquid 4L</p> <p>\$18.50 \$4.63 / 1L</p> <p>Add to cart</p> <p>Save to list</p>	 <p>Earth Choice Dishwashing Liquid 900ml</p> <p>\$5.80 \$0.64 / 100ML</p> <p>Add to cart</p> <p>Save to list</p>	 <p>Earth Choice Shower Cleaner 600ml</p> <p>\$4.15 \$0.69 / 100ML</p> <p>Add to cart</p> <p>Save to list</p>	 <p>Earth Choice Floor Surface Cleaner 1L</p> <p>\$3.85 \$0.34 / 100ML</p> <p>Add to cart</p> <p>Save to list</p>	 <p>Earth Choice Window Cleaner Window 600ml</p> <p>\$3.15 \$0.53 / 100ML</p> <p>Add to cart</p> <p>Save to list</p>	 <p>Earth Choice Top & Front Loader Liquid 2L</p> <p>\$13.50 \$6.75 / 1L</p> <p>Add to cart</p> <p>Save to list</p>	<p>Earth Choice Top & Front Loader Liquid 2L</p> <p>\$14.00 \$7.00 / 1L</p> <p>Add to cart</p> <p>Save to list</p>
 <p>Earth Choice Ultra Concentrate Dishwashing Liquid Red Apple 900ml</p> <p>\$5.80 \$0.64 / 100ML</p> <p>Add to cart</p> <p>Save to list</p>	<p>SAVE \$1.00</p> <p>Special</p>  <p>Earth Choice Lemon Burst Dishwash 500ml</p> <p>\$2.25 \$0.45 / 100ML</p> <p>Was \$3.25</p> <p>Add to cart</p> <p>Save to list</p>	 <p>Earth Choice Front Loader Liquid 1L</p> <p>\$7.70 \$7.70 / 1L</p> <p>Add to cart</p> <p>Save to list</p>	 <p>Earth Choice Floor Cleaner Wooden Surface 750ml</p> <p>\$5.00 \$0.67 / 100ML</p> <p>Add to cart</p> <p>Save to list</p>	 <p>Earth Choice Wild Orchid & Magnolia Fabric Softener 1L</p> <p>\$6.50 \$6.50 / 1L</p> <p>Add to cart</p> <p>Save to list</p>	<p>SAVE \$1.00</p> <p>Special</p>  <p>Earth Choice Ultra Concentrate Antibacterial Dish Liquid 500ml</p> <p>\$2.25 \$0.45 / 100ML</p> <p>Was \$3.25</p> <p>Add to cart</p> <p>Save to list</p>	<p>Earth Choice Ultra Concentrate Antibacterial Dish Liquid 500ml</p> <p>\$2.25 \$0.45 / 100ML</p> <p>Add to cart</p> <p>Save to list</p>	<p>Earth Choice Ultra Concentrate Antibacterial Dish Liquid 500ml</p> <p>\$2.25 \$0.45 / 100ML</p> <p>Add to cart</p> <p>Save to list</p>

9. Tru-Earth





Foodstuffs examples		
<p>Tru-Earth Fresh Linen Laundry Detergent Eco-Strips 32pk</p> 	<p>Tru-Earth Fragrance Free Laundry Detergent Eco-Strips 32pk</p> 	

10. Eco Living

Woolworths examples

		
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11. Home brand. Both Foodstuffs and Woolworths offer private label laundry detergent products. Of particular note, Woolworths' *Macro* brand directly competes with Earthwise, Eco Store, Eco Planet and others for eco-conscious consumers. (We note again too that the acquisition does not affect Earthwise Group and Woolworths' existing contract manufacturing arrangements - []).

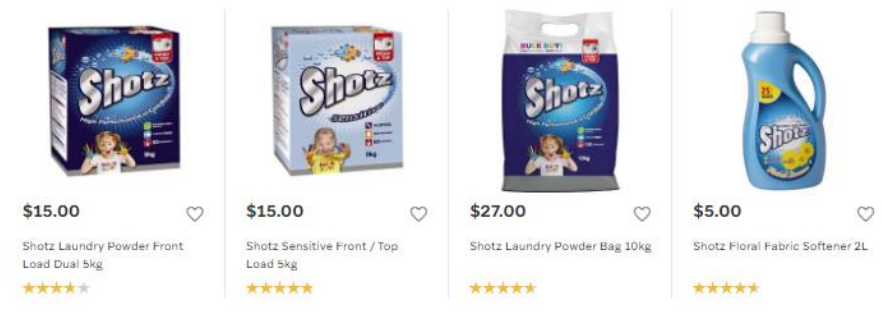
Macro (Woolworths)		
 <p>Macro Laundry Powder Geranium & Musk</p>	 <p>Macro Laundry Liquid Geranium & Musk</p>	 <p>Macro Laundry Liquid Fragrance Free</p>
Woolworths		
 <p>Essentials Laundry Liquid</p>		
Foodstuffs examples		

<p>Value Laundry Detergent 2l</p> 	<p>Pams Top Loader Tropical 2 x Concentrate Laundry Powder 1kg</p> 	<p>Pams Front Loader Fresh 2 x Concentrate Laundry Powder 1kg</p> 
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Other local laundry detergent suppliers

- 72 In addition to Foodstuffs and Woolworths’ current laundry detergent suppliers, other retailers sell other laundry detergents too.
- 73 It follows that Foodstuffs and Woolworths, with far greater scale, must also be able to import these and other products from around the world.
- 74 By way of example:

74.1 The Warehouse sells the **Shotz** range of laundry detergent:



74.2 Costco imports and sells its private-label **Kirkland** signature laundry detergents and Procter & Gamble’s **Tide** products (Tide is North America’s number one laundry detergent).³⁸

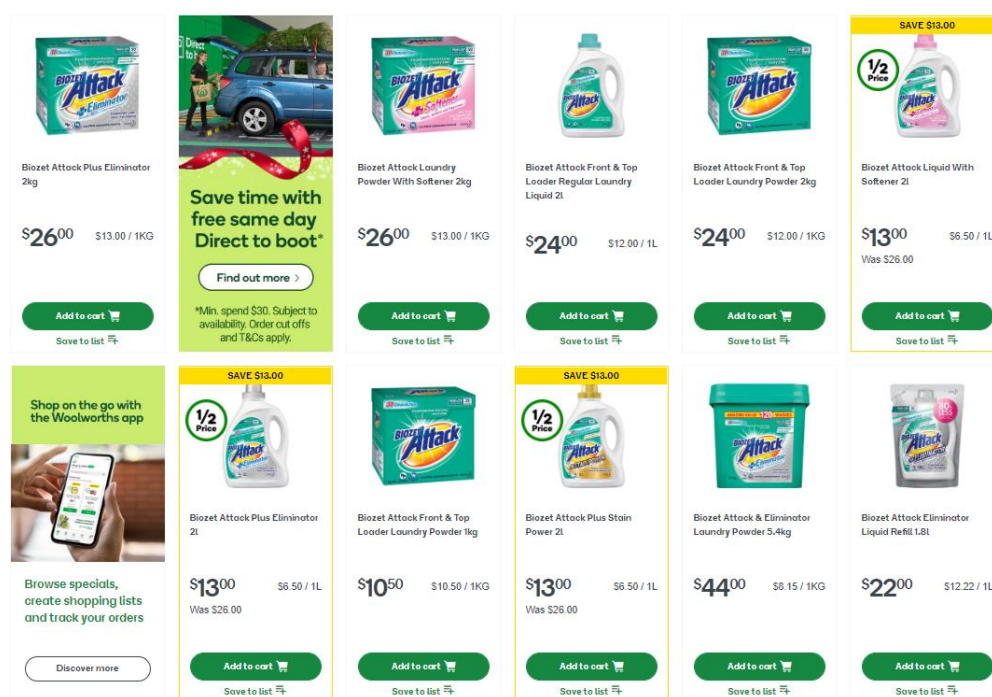
74.3 Mitre 10 sells imported **Optimo** and **AquaBlue** branded laundry detergents.³⁹

³⁸ <https://tide.com/en-us/our-commitment/americas-number-one-detergent/voted-best-detergent>

³⁹ https://www.mitre10.co.nz/shop/laundry-cleaning/laundry-ironing/laundry/c/RF5238?q=%3ARELEVANCY%3AbrandName_uFilter%3AOPTIMO%3AbrandName_uFilter%3AAquaBlue%3AfineLine_uFilter%3ALaundry+cleaning+chemicals&inStockSelectedStore=faIse&inStockNationwide=false#

Other Australian suppliers (example)

- 75 Another import option open to Foodstuffs, Woolworths and other local retailers is **Biozet Attack**, a prominent laundry detergent brand in Australia.
- 76 Biozet Attack is manufactured by Kao Corporation, a global consumer goods manufacturer that supplies markets across Asia, Oceania, North American and Europe.⁴⁰
- 77 Biozet Attack's full range of laundry detergents are stocked by Coles, Woolworths Australia and others:⁴¹



COMPETITION ANALYSIS: LAUNDRY DETERGENTS

- 78 The proposed acquisition will result in the loss of competition between Henkel and Earthwise branded laundry detergent.
- 79 This section explains why that loss of competition will not be substantial (or slight) by:
- 79.1 defining the relevant laundry detergent **market**;
 - 79.2 explaining why the acquisition will not substantially lessen competition in that market due to **unilateral** effects given retailers have significant

⁴⁰ <https://www.biozetattack.com.au/about-us/>

⁴¹ <https://www.woolworths.com.au/shop/search/products?searchTerm=biozet%20attack>

countervailing buyer power and many competing wholesale options to play-off against each other in bilateral commercial negotiations;

79.3 recording why the acquisition will not substantially lessen competition in the market due to **coordinated** effects for similar reasons; and

79.4 explaining why the acquisition will not substantially lessen competition in any laundry detergent market due to **conglomerate/bundling** effects because neither Henkel nor Earthwise's products are "must have".

Market definition

80 Henkel considers that this proposed acquisition is best assessed against a national wholesale laundry detergent market.

81 The basis for that view is as follows:

81.1 By and large, all laundry detergent consumed in New Zealand is wholesaled to retailers for on-sale to end customers (leaving aside laundry detergents for large-scale professional cleaning which neither Henkel nor Earthwise offer). Henkel, Earthwise and all other mentioned laundry detergent suppliers operate within this wholesale supply model.

81.2 All wholesale customers have the same range of laundry detergent supply options available to them. As it happens, the applicants estimate over 95% of laundry detergents are sold to Foodstuffs and Woolworths. It follows that these firms' purchasing decisions ultimately dictate what laundry detergent suppliers exist at scale in the market at any given time.

81.3 Laundry detergent wholesalers can supply all of New Zealand.

81.4 All laundry detergents are substitutable with each other given:

- (a) All laundry detergents are used for the same purpose (to clean clothes);
- (b) All laundry detergent formats (liquid, powder and capsules/sheets), concentration levels (strong, diluted) and variants (allergy-free, "eco-friendly", high-performance etc.) are used to clean clothes; and
- (c) All laundry detergents can be used in all modern washing machines or for washing garments by hand.

82 In these circumstances, if the wholesale price of any given laundry detergent product increased by 5-10%, retailers would plainly switch to buying other laundry detergents. That reality is particularly so given Foodstuffs' and Woolworths'

significant countervailing buyer power could, and most likely would, immediately facilitate switching across the country.

83 A national wholesale laundry detergent market is consistent with the Commission's *Decision 529* findings; the last determination on the topic.⁴²

84 In this 2004 case the Commission held:

Laundry detergent includes products for cleaning fabrics by hand or machine. There are slight variants in laundry detergents. In particular, they come in both powder and liquid forms, and two different strengths of standard and concentrate. However, given that consumers can readily substitute one form or strength for another based on individual preference or price, the Commission concludes that those differences do not justify placing them in different product markets.

85 Henkel sees no reason for the Commission to depart from that position in 2023.

86 In making that point, though, Henkel observes that there has been a growth in environmentally-conscious detergents since 2014 and some customers may be particularly wedded to those green products. It follows that Earthwise considers its closest competitors are other environmentally-friendly brands – a point we elaborate on shortly below.

87 Further, in line with *Decision 529*, Henkel agrees that toilet cleaner and laundry aids are in separate wholesale markets.⁴³ We address the proposed acquisition's effect on those markets after analysing the wholesale laundry detergent market.

Competition analysis: unilateral effects

88 Henkel is confident that the proposed acquisition does not give rise to, nor would be likely to give rise to, a substantial lessening of competition in New Zealand's wholesale laundry detergent market.

89 The proposed acquisition would not give existing laundry detergent wholesalers the ability to raise their prices at all given:

89.1 **Henkel and Earthwise are not close competitors, so the loss of competition between the pair would not materially affect market dynamics.** Henkel focuses on laundry detergents for price/quality conscious consumers. Its closest competitors are other global consumer goods manufacturers like Unilever, PZ Cussons, Kao Corporation, Procter & Gamble

⁴² https://comcom.govt.nz/_data/assets/pdf_file/0022/73831/529.pdf

⁴³ In taking that view, Henkel observes the pre-wash market is heavily constrained by the laundry detergent market given the products do very similar things: remove stains and clean clothes. We expand on this point below.

and others. Earthwise, on the other hand, targets the “eco-conscious” consumer by producing laundry detergent products containing natural ingredients. Earthwise’s many rivals include Ecostore, Quantum Pacific (Eco Planet), Living Green, Re•Store, Woolworths’ *Macro*, Natures Organics, Will&Able and so on.

Those rivalries will not be disturbed by the proposed acquisition.

89.2 **Foodstuffs and Woolworths buy ~95%+ of laundry detergents in this country and have enormous countervailing power.** The supermarket chains could and would push-back against wholesale laundry detergent price increases by threatening to pull suppliers’ other product ranges from their shelves and/or self-supply with home brands. These threats are particularly concerning for laundry detergent suppliers given: (a) all laundry detergent suppliers sell other products to Foodstuffs and Woolworths that would be at risk if they sought to exercise (non-existent) market power over laundry detergents; and (b) Woolworths has already entered the “eco-friendly” laundry detergent space with its *Macro* range and Foodstuffs could quickly and easily follow suit as there are many options for contract manufacturing.

89.3 **Post-acquisition, Foodstuffs, Woolworths and other retailers will continue to source competitive wholesale laundry detergent supply by playing off many available options.** As outlined in the industry background section, at least the following laundry detergent suppliers will be available to retailers following the proposed acquisition:

Suppliers already on Foodstuffs’ and Woolworths’ shelves

- (i) Unilever;
- (ii) Ecostore;
- (iii) PZ Cussons (distributed by DKSH);
- (iv) Quantum Pacific (Eco Planet);
- (v) Living Green;
- (vi) Natures Organics (Earth Choice);
- (vii) Re•stor;
- (viii) Will&Able;
- (ix) Tru-Earth;

- (x) Eco Living; and
- (xi) Homebrand options, including Woolworths' *Macro*.

Other suppliers on other retailers' shelves

- (xii) Shotz;
- (xiii) Procter & Gamble's *Tide*; and
- (xiv) others.

Other suppliers on Woolworths Australia's shelves

- (xv) Kao Corporation (Biozet Attack).

90 Henkel's view that the proposed acquisition would not SLC is consistent with Henkel and Earthwise's low market shares. While those shares largely reflect who Foodstuffs and Woolworths have chosen to do business with – which could have included many other laundry detergent suppliers and could change at any moment – the shares demonstrate that many consumers buy non-Henkel and non-Earthwise laundry detergents:

Laundry detergents	Brands	Retail value (\$NZD), 2022	Market share
Unilever	<i>Persil; Surf</i>		
Henkel	<i>Cold Power; Dynamo; Fab</i>		
Earthwise	<i>Earthwise</i>		
Eco Store	<i>Ecostore</i>		
Private Label	<i>Foodstuffs – Pams; Value Woolworths – Essentials; Macro</i>		
PZ Cussons	<i>Reflect</i>		
Quantum Pacific	<i>Eco Planet</i>		
Other			
Total			

Source: IRI data⁴⁴

⁴⁴ IRI data is based on "scan out" data provided by the grocery retailers in New Zealand to IRI. There are no extrapolation estimates applied. IRI data includes data from all grocery chains within NZ (this excludes data from The Warehouse Group). The data is from Woolworths New Zealand, Foodstuffs North Island and Foodstuffs South Island and includes data at a more granular level within these chains for example, Countdown, New World and Pak n Save. The Laundry detergent segment covers powders, liquids and capsules.

91 Henkel’s view that its acquisition of Earthwise would not SLC is also consistent with the Commission’s Grocery Report and recent *Life Health Foods / Chalmers Organics* decision. In that case involving tofu, a perishable food where the merging parties were “the [country’s] two largest suppliers”, the Commission held: “*Foodstuffs and Woolworths hold significant buyer power and are able to prevent unjustified price increases from the merged entity through their ability to source tofu from competing suppliers*”.⁴⁵

92 Further, Henkel’s view is also consistent with the Commission’s *Decision 529* which cleared Colgate’s acquisition of Campbell Brothers given, among other constraints, “the presence of Unilever as a large global player”.

Coordinated effects

93 The proposed transaction will not, and will not be likely to, increase the potential for coordinated effects to arise in any market.

94 There is no element of this proposed acquisition that will make it easier for Henkel and its competitors to:

94.1 reach agreement on price and/or quality of wholesale laundry detergent supplied to retailers like Foodstuffs and Woolworths; and

94.2 sustain any such hypothetical agreement by:

(a) detecting deviations from that agreement; and/or

(b) punishing any deviations from that agreement.

95 We expand below with reference to the Commission’s *Guidelines*’ “market features that may facilitate coordinated conduct”.

95.1 The wholesale laundry detergent market is **not controlled by a small number of competitors**. To the contrary, as we outline above, there are many laundry detergent suppliers in New Zealand.

95.2 Market participants **cannot observe each other’s prices, volumes or capacity**. To the contrary, all wholesale laundry detergent prices are set behind closed doors in negotiations with sophisticated retailers like Foodstuffs and Woolworths.

95.3 Laundry detergent suppliers **do not interact**.

⁴⁵ <https://comcom.govt.nz/news-and-media/media-releases/2022/life-health-foods-cleared-to-acquire-chalmers-organics>

95.4 The market is **not lacking innovation or dynamism**. As set out above, all laundry detergent suppliers offer a very broad range of products, each targeting different consumer preferences.

96 For those reasons, the Commission can be satisfied that the proposed acquisition will not substantially lessen competition in New Zealand's wholesale laundry detergent market due to coordinated effects.

Bundling / conglomerate effects

97 The Commission can be satisfied that the proposed acquisition will not substantially lessen competition in New Zealand's laundry detergent market due to conglomerate effects. Neither Henkel nor Earthwise sell a "must have" product that is not available from the market's many other suppliers.

Conclusion

98 For the reasons above, Henkel is comfortable the proposed acquisition would not substantially lessen competition in any New Zealand laundry detergent market.

LAUNDRY AIDS

99 Laundry aids are pre-wash products added before or with the clothes washing machine or hand wash process to help remove stains, deodorise clothes, enhance colours and/or kill germs.

100 Given pre-washing is not a prerequisite to washing clothes, as many laundry detergents are sufficient in themselves to remove stains, deodorise, enhance colours and kill germs, New Zealand's laundry aids market is considerably smaller than the laundry detergent market.

101 It follows that while Henkel acknowledges pre-washes may be appropriately defined as a separate competition law market, laundry detergents nevertheless place a significant constraint on pre-wash price and quality. Put simply, consumers will not buy pre-washes if they can obtain the same value from using high-quality laundry detergents.

102 In any event, Henkel observes the proposed acquisition would not substantially lessen competition within the small and narrow pre-wash market given Foodstuffs, Woolworths and other retailers have many competing wholesale pre-wash options to choose from, including:

102.1 **Reckitt's** *Vanish, Napisan and Frend* ranges;



102.2 **SC Johnson's** *Shout* range of stain removers;



102.3 **Ecostore's** laundry stain remover which competes directly with Earthwise's similar eco-friendly product:⁴⁶



102.4 **Eco Planet's** laundry stain remover which similarly competes with Earthwise's eco product;

⁴⁶ <https://ecostore.com/nz/ultra-sensitive-laundry-soaker-stain-remover-382/>



102.5 **Ultra Max** stain remover (stocked by the Warehouse):



102.6 And launching a private label pre-wash brand like Coles' has done in Australia:



103 Indeed, both Henkel and Earthwise have a low share of Foodstuffs and Woolworths' laundry aid sales, with Reckitt dominating this product range:

Pre-wash	Brands	Retail value (\$NZD), 2022	Market share
Reckitt	<i>Vanish, Napisan, FrenD</i>		
Henkel	<i>Sard</i>		
Bayer	<i>Canesten</i>		

Quantum Pacific	<i>Eco Planet, Ceraclen⁴⁷</i>		
Earthwise	<i>Earthwise</i>		
Pental	<i>Janola</i>		
SC Johnson	<i>Shout</i>		
Unilever	<i>Persil</i>		
Ecostore	<i>Ecostore</i>		
Others (incl. private label)			
Total			

Source: IRI data

- 104 Furthermore, given pre-wash suppliers all sell other products to Foodstuffs and Woolworths, the supermarkets have significant countervailing buying power to threaten to drop these suppliers' other products if they do not keep laundry aid pricing sharp.
- 105 By way of example, Foodstuffs and Woolworths could credibly threaten to drop Reckitt's *Harpic* brand of toilet cleaner if that company tried to arbitrarily increase the price of *Vanish* because of this proposed acquisition. In a similar vein, any attempt by Henkel to increase the price of *Sard* would be thwarted by Foodstuffs and Woolworths threatening to de-list Henkel's (future) Earthwise range in favour of, say, Eco Planet or Ecostore.

TOILET CLEANER

- 106 For the same reasons, the loss of competition between Henkel and Earthwise's toilet cleaners would not substantially lessen competition in any related market.
- 107 There are many suppliers of toilet cleaners in New Zealand, including:

107.1 **SC Johnson's Duck;**



⁴⁷ Ceraclen is Quantum Pacific's washing machine cleaning brand.

107.2 **Reckitt's Harpic;**



107.3 **Pental's Janola**



107.4 **Ecostore's** toilet cleaner which competes directly with Earthwise's eco-friendly toilet cleaner



107.5 **Eco Planet's** eco toilet cleaner



107.6 Living Green's eco toilet cleaner



108 Indeed, both Henkel and Earthwise have a low share of Foodstuffs and Woolworths' toilet cleaner:

Toilet cleaner	Brands	Retail value (\$NZD), 2022	Market share
<u>SC Johnson</u>	<u>Duck</u>		
<u>Reckitt</u>	<u>Harpic</u>		
<u>Henkel</u>	<u>Bref</u>		
<u>Pental</u>	<u>Janola</u>		
<u>Private Labels</u>	<u>Woolworths – Essentials</u>		
<u>Earthwise</u>	<u>Earthwise</u>		
<u>Ecostore</u>	<u>Ecostore</u>		
<u>Acton IM</u>	<u>Spring Fresh</u>		
<u>Quantum Pacific</u>	<u>Eco Planet</u>		
<u>Unilever</u>	<u>Domestos</u>		
Total			

Source: IRI data

CONCLUSION

109 Henkel respectfully asks the Commission to grant clearance to the proposed acquisition under s 66 of the Commerce Act 1986 because Henkel's acquisition of Earthwise would not substantially lessen competition in any New Zealand market.

CONFIDENTIALITY

- 1 Henkel seeks confidentiality over the information in this application and documents attached at Schedule A that are contained within square brackets and highlighted (Confidential Information).
- 2 Henkel asks that the Commission notify it of any requests for Confidential Information made under the Official Information Act 1982. Henkel respectfully asks that, in those circumstances, the Commission provide it with an opportunity to submit its views on why the information should not be disclosed.
- 3 For the purposes of s 9(2)(b) of the OIA, Henkel considers that the Confidential Information is:
 - commercially sensitive and valuable information which is confidential to it and/or Earthwise; and
 - public disclosure of the Confidential Information would be likely to unreasonably prejudice either party's commercial position.

SCHEDULE A: DOCUMENTS

Transaction documents

- 1 Documents enclosed [].

Henkel internal documents

- 2 Documents enclosed [].

Applicant audited financial report and accounts

- 3 Documents enclosed [].

SCHEDULE B: COMMISSION REQUESTED INFORMATION AND DOCUMENTS

The following table specifically responds to the information and documents requested by the Commission in its s 66 clearance notice form.

Notice para.	Commission request	Response
[1]	Applicant details	See body of application.
[2]	Other party details	See body of application.
[3]	Type of transaction, deal rationale, change of control, ancillary agreements, counterfactual.	See body of application.
[4]	International notification	No.
[5.1]	Applicant's view on market definition	See body of application.
[5.2]	Each merging party's total sales revenues, volumes and capacity for the last three financial years.	Documents enclosed []. [].
[5.3]	Names and contact details of the merging parties' main competitors	Henkel sets out its main competitors in this clearance application. Henkel does not have these rivals' contact details.
[5.3]	Names of any trade or industry associations which either of the merging parties participate	N/A.
[5.4]	Names and contact details of merging	The parties' primary customers are Foodstuffs and Woolworths. Henkel understands the

	parties top 5 customers	Commission has these parties' best contact details.
[6]	Explain why the deal is unlikely to SLC	See body of application.
[7]	Copies of documents bringing about the merger	See Schedule A.
[8]	Internal applicant documents seen by the Board or senior management within the last two years that relate to: 110 the transaction; or 111 market conditions.	See Schedule A.
[9]	Most recent annual report, audited financial statements and management accounts	See Schedule A.