



Coty Inc acquisition of part of the hair care, colouring and styling, colour cosmetics and fragrance businesses of Procter and Gamble Company

PUBLIC VERSION

NOTICE SEEKING CLEARANCE OF A BUSINESS ACQUISITION PURSUANT TO SECTION 66 OF THE COMMERCE ACT 1986

22 December 2015

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.

MinterEllisonRuddWatts

EXECUTIVE SUMMARY

The Parties

- 1.1 Coty Inc. (**Coty**) is a global beauty products manufacturer listed on the New York Stock Exchange. Its main products are fragrances, colour cosmetics and skin & body care products. Coty's product offerings include fragrances marketed under brands such as adidas, Calvin Klein, Chloé, Davidoff, Marc Jacobs, philosophy, and Playboy, and branded colour cosmetics products such as Bourjois, OPI, Rimmel and Sally Hansen.
- 1.2 The Procter and Gamble Company (**P&G**) is a global manufacturer of consumer goods, including fabric and household care, beauty care, grooming, health care, baby, feminine and family care products.

The Proposed Transaction

- 1.3 Coty seeks clearance to acquire a significant part of the global hair care, colouring and styling, colour cosmetics and fragrance businesses of P&G (the **Target Businesses**) (the **Proposed Transaction**). As both Coty and P&G products are supplied in New Zealand, the Proposed Transaction affects a market in New Zealand.
- 1.4 The Target Businesses include fragrances marketed under brands such as Dolce & Gabbana, Gucci, Hugo Boss, and Lacoste, the colour cosmetic brands Cover Girl and Max Factor, and hair care, colouring and styling brands such as Clairol and Wella.
- 1.5 The Proposed Transaction will, ultimately, be put into effect by merging a Coty subsidiary, Green Acquisition Sub Inc. (**Merger Sub**) with and into a newly formed P&G subsidiary, Galleria Co (US) (**Green NewCo**). P&G will transfer the Target Businesses to Green NewCo, whose shares will be distributed to P&G's shareholders. Green NewCo will then merge with Merger Sub. Coty will own 100% of the merged entity immediately following the transaction.
- 1.6 All non-US assets of the Target Businesses, including the New Zealand assets, will be transferred to a Green NewCo subsidiary (**Green Foreign Sub**). The Proposed Transaction will result in little change to the operation of the relevant Coty and P&G businesses in New Zealand. Both Coty and P&G use the same New Zealand distributor, CS Company Limited (CS Company), and that arrangement is likely to continue post transaction.

The Relevant Markets

- 1.7 Coty and the Target Businesses participate in a number of consumer goods segments – colour cosmetics, hair care, deodorants and fragrances – with limited overlaps.
- 1.8 In New Zealand the only material overlap between Coty and the Target Businesses is in the wholesale distribution of fragrances and nail products.
- 1.9 Within the fragrances market, significant overlap occurs only in the men's prestige fragrance segment. While in our view the appropriate product dimension of the market would comprise all fragrances (incorporating mass and prestige fragrances for men and women), for the purposes of assessing the competitive effects of the transaction, we have nonetheless provided information on the most narrowly-defined market available,

on the basis that “*if competition concerns are not identified within the narrowly-defined market they are unlikely to arise in a broadly-defined market.*”¹

- 1.10 Accordingly, we have analysed the likely competition effects of the Proposed Transaction in two market segments:
- (a) the national wholesale distribution of men’s prestige fragrances (**men’s prestige fragrances**); and
 - (b) the national wholesale distribution of nail products (**nail products**).

No Substantial Lessening of Competition

- 1.11 The Proposed Transaction would not have the effect or likely effect of substantially lessening competition in any market. There are a large number of competing suppliers, barriers to entry are low, and rights holders exert countervailing power.

Men’s prestige fragrances

- 1.12 Coty is currently the second largest supplier of men’s prestige fragrances in New Zealand representing 19% of retail sales in 2014, according to Euromonitor International’s Retailing Global Passport.² It distributes fragrances under brands such as adidas, Calvin Klein, Cerruti, Chloé, Davidoff, Marc Jacobs, and Playboy.
- 1.13 This share of sales based on current figures may increase to as much as 34% post transaction, with the addition of the Target Businesses, which currently has the third highest sales of men’s prestige fragrances in New Zealand. The Target Business’ fragrance brands sold in New Zealand are Dolce & Gabbana, Escada, Gucci, Hugo Boss, James Bond 007, Lacoste, and Stella McCartney.
- 1.14 The merged entity will continue to face strong competition in the men’s prestige fragrances segment from the market leader, L’Oréal (36% of 2014 retail sales) whose brands include Giorgio Armani, Diesel, Ralph Lauren, Yves Saint Laurent and Kouros and a number of smaller competitors including Shiseido (8%) and Elizabeth Arden (6%).
- 1.15 The fragrance market is highly fragmented, as evidenced by the hundreds of brands competing in New Zealand. Entry to fragrances is low cost, due to the fact that almost all fragrances sold in New Zealand are imported.

Nail products

- 1.16 Coty is the leading supplier of nail products in New Zealand, representing approximately 28% of retail sales in 2014. It distributes “nail only” brands Sally Hansen, OPI and Cutex, as well as Bourjois and Rimmel (colour cosmetics brands with a range of nail colour products).
- 1.17 Post transaction with the acquisition of the Target Businesses, which distribute Max Factor and Cover Girl colour cosmetic products in New Zealand, including a range of nail colour products, the merged entity will account for approximately 34% of sales of nail products in New Zealand.

¹ Reckitt Benckiser PLC and Boots Healthcare International Ltd, Decision 567, 30 November 2005, paragraph 44.

² All market shares are based on Passport, which is the best estimate available of retail sales by category.

- 1.18 The merged entity will continue to face strong competition from L'Oréal (22% of 2014 sales) whose brands include L'Oréal Paris, Lancome, The Body Shop, Yves Saint Laurent and Maybelline, Revlon (15%), and Avon (9%), and a large number of smaller competitors.
- 1.19 The supply of nail products in New Zealand is highly fragmented. Aside from "nail-only" brands, every colour cosmetics range in New Zealand also has its own nail product offering. A number of brands, such as L'Oreal and Maybelline, also supply direct to market.

Competitive Constraints

- 1.20 In both the men's prestige fragrances and nail products segments, barriers to entry are low. Products are almost entirely imported, and there are a number of New Zealand distributors experienced in these products.
- 1.21 Most of the imported fragrance products are subject to licence arrangements with the owners of fashion, lifestyle, and celebrity brands. All of these licence arrangements are subject to renegotiation from time to time on a global basis, so rights owners have countervailing power to ensure their brands are presented and marketed in accordance with their directions.

Benefits of the Proposed Transaction

- 1.22 The Proposed Transaction presents an opportunity for Coty to diversify, improve its access to attractive new geographic markets and thereby move from a mid-tier player to a pure-play, global challenger in the beauty industry. This will allow Coty to better compete with the leading beauty industry players, L'Oréal, Estée Lauder and Avon.

2. APPLICANT AND OTHER PARTIES

The applicant

2.1 This notice is given by Coty Inc. (**Coty**)

2.2 Details for Coty are:

Postal address: 350 Fifth Avenue, New York, NY 1011, USA

Physical address: 350 Fifth Avenue, New York, NY 1011, USA

Telephone: +1 212 479 4338

Web address: <https://www.coty.com/>

Contact person: Jules Kaufman,
Senior Vice President, General Counsel and Secretary
+1 212 479 4338
jules_kaufman@cotyinc.com

Relevant related entities: JAB Holding Company S.à r.l.

Contact person: Joachim Creus,
Partner, General Counsel and Head of Tax
+1352 27 177 539
Joachim.creus@jabse.eu

2.3 All correspondence and notices in respect of this application should be directed in the first instance to:

Minter Ellison Rudd Watts
Lumley Centre
88 Shortland Street
Auckland 1010

Dr Ross Patterson, Partner
+64 9 353 9864
ross.patterson@minterellison.co.nz

Kristel Harlow, Senior Associate
+64 9 353 9837
kristel.harlow@minterellison.co.nz

The other party

2.4 The other party is The Procter and Gamble Company (**P&G**)

2.5 Details for P&G are:

Postal address: 1 Procter & Gamble Plaza, Cincinnati, OH 45201, USA

Physical address: 1 Procter & Gamble Plaza, Cincinnati, OH 45201, USA

Telephone: +1 513 983 1100

Web address: <http://us.pg.com/>

Contact person: Joanna Neidermeyer,
Senior Legal Counsel
+1 513 983 1100
neidermeyer.jm@pg.com

Relevant related

entities: Procter & Gamble Distributing New Zealand Limited

Contact person: Joanna Neidermeyer,
Senior Legal Counsel
+1 513 983 1100
neidermeyer.jm@pg.com

2.6 All correspondence and notices in respect of this application should be directed in the first instance to:

Jones Day
Aurora Place
88 Phillip St
Sydney NSW 2000
AUSTRALIA

Nick Taylor, Partner
+61 2 8272 0715
njtaylor@jonesday.com

Prudence Smith, Of Counsel
+61 2 8272 0593
prudencesmith@jonesday.com

3. TRANSACTION DETAILS

The Proposed Transaction

- 3.1 Coty seeks clearance to acquire a significant part of the global hair care, colouring and styling, colour cosmetics and fragrance businesses of P&G (the **Target Businesses**) (the **Proposed Transaction**). As both Coty and P&G products are supplied in New Zealand, the Proposed Transaction affects a market in New Zealand.
- 3.2 The Proposed Transaction will, ultimately, be effected by merging a Coty subsidiary, Green Acquisition Sub Inc. (**Merger Sub**), with and into a newly formed P&G subsidiary, Green NewCo (US) Inc (**Green NewCo**)³, which will hold the Target Businesses, whereupon Green NewCo will be spun-off or split-off from P&G to P&G's shareholders.
- 3.3 P&G will transfer the Target Businesses to Green NewCo by way of contributions, asset sales and stock sales:
- (a) **Galleria Transfer** – P&G will transfer the US assets of the Target Businesses to Green NewCo, an entity wholly owned by P&G at this stage. The non-US assets of the Target Businesses, which are mostly located in Switzerland, Thailand and Mexico, but including New Zealand, will be transferred from P&G to Green Foreign Sub, which will be a wholly owned subsidiary of Green NewCo.
 - (b) **Distribution** – After the Galleria Transfer, P&G will complete either a one-step spin-off or an exchange offer of Green NewCo shares to its shareholders, with the choice between these distribution forms at P&G's discretion. In case of a one-step spin-off, shares of Green NewCo will be distributed to the shareholders of record of P&G on the distribution date. Each shareholder will be entitled to receive shares in Green NewCo stock on a pro rata basis. If P&G elects to effect the distribution as an exchange offer, P&G will decide the number of stock offered for each validly tendered share.
 - (c) **Recapitalisation** – When the US and non-US parts of the Target Businesses have been transferred to Green NewCo and its subsidiary or within seven business days prior to such transfer, Green NewCo will enter into a credit facility and make certain payments to P&G.
 - (d) **Merger** – The merger of Merger Sub with and into Green NewCo will be conditioned on completion of the spin-off or the exchange offer, as applicable. Green NewCo will be the surviving entity. Merger Sub will assume all of the debt of Green NewCo. Coty will own 100% of the merged entity immediately following the transaction and may, in certain circumstances, guarantee the debt of the merged entity.
 - (e) **Issuance** – The shareholders of Green NewCo will be offered in total around 52% of the shares of Coty on a pro forma fully-diluted basis. Based on the current shareholding structure of P&G, none of P&G's shareholders are expected to hold more than 5% of the shares of Coty. The pre-merger Coty shareholders are expected to retain approximately 48% of Coty's shares. Coty is currently majority owned by JAB Cosmetics B.V., a company of the JAB Group. This shareholding would be diluted to approximately 35% of the shares and the votes by the

³ Green NewCo is also referred to as SplitCo by the Parties, e.g. in the Transaction Agreement.

transaction, keeping JAB Cosmetics B.V. as the largest individual shareholder of the surviving entity.

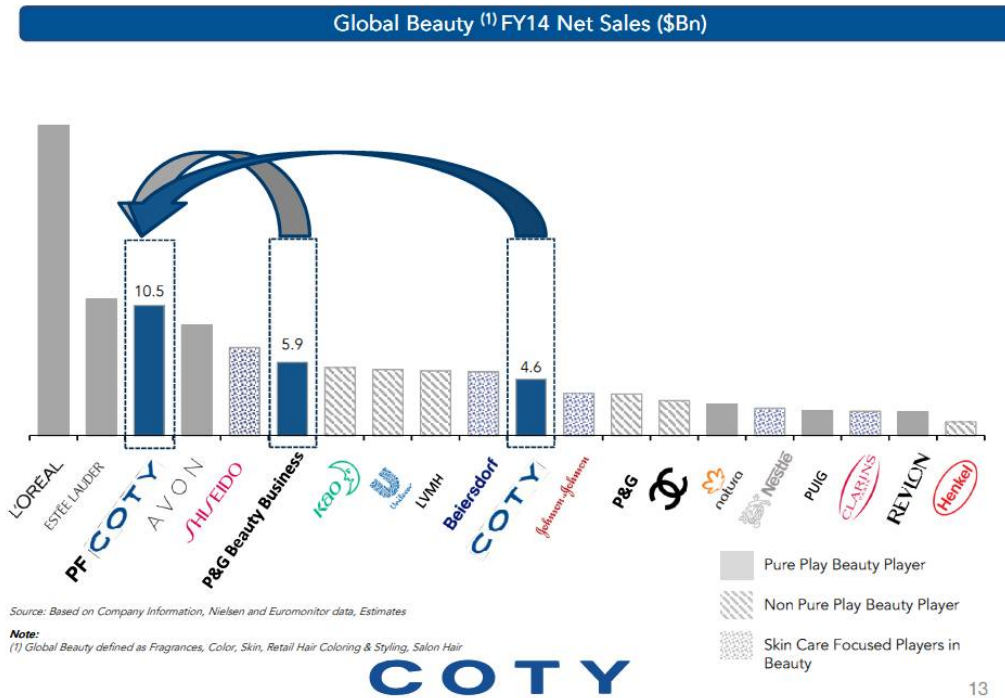
- 3.4 Post transaction, Coty will control and own 100% of the shares of the merged entity holding all of the Target Businesses. JAB's current majority shareholding in Coty will be diluted by the Proposed Transaction, but JAB will remain the single largest shareholder of Coty with a shareholding of about 35% of the shares and the votes. The remaining shares will be widely dispersed and no single former P&G shareholder is expected to hold more than 5% of Coty shares following the Proposed Transaction.
- 3.5 The only subsidiary of JAB active in the segments of colour cosmetics and/or fragrances is Coty. Other than the aforementioned undertakings and businesses, neither Coty, nor its controlling entities, hold individually or collectively 10% or more of the voting rights, issued share capital or other securities investments of any other undertaking active in any affected segment, with the exception of the luxury goods producer Jimmy Choo that has licensed its brand to an independent third party fragrance producer.
- 3.6 A transaction agreement between P&G, Coty, Green NewCo and Merger Sub was signed on 9 July 2015. A copy of this agreement is provided in **Confidential Appendix 1**.
- 3.7 The Parties propose to complete the Proposed Transaction as soon as feasible in 2016, provided all relevant employee consultation obligations have been respected and the conditions precedent to that agreement have been satisfied, including securing European Commission approval and the approval of other competition authorities for the Proposed Transaction.
- 3.8 The Proposed Transaction was valued at USD 12.5 billion at the time the offer was made. This valuation was composed of Coty shares to be issued to Green NewCo shareholders with a value of USD 9.6 billion and an assumed debt of USD 2.9 billion – with a collar of +/- USD 1 billion based on the trading price of Coty's stock (range of USD 22.06 to USD 27.06 per share) prior to the close of the Proposed Transaction, as well as other contractual valuation adjustments.
- 3.9 The New Zealand assets of the Target Businesses are owned primarily by Procter & Gamble Distributing New Zealand Limited (NZBN 9429040458786) which is ultimately 100% owned by P&G, as shown on the chart in **Confidential Appendix 2**. Some of the assets are owned by P&G Asia Pte Ltd, which is also ultimately a wholly owned subsidiary of P&G. These companies will transfer the relevant New Zealand assets to Green Foreign Sub, as set out in paragraph 3.3(a).
- 3.10 The Proposed Transaction will result in little change to the operation of the relevant Coty and P&G businesses in New Zealand. Both Coty and P&G use the same New Zealand distributor, CS Company, and that arrangement is likely to continue post transaction.

The rationale for the transaction

- 3.11 The Proposed Transaction is an opportunity for Coty to diversify, improve its access to attractive new geographic markets and thereby move from a mid-tier player to a pure-play, global challenger in the beauty industry. This will allow Coty to better compete with the leading industry players.

3.12 L'Oréal will remain by far the largest global beauty company (including in New Zealand) following the Proposed Transaction, with Estée Lauder a distant second, followed by the enlarged Coty business and Avon.

Table 1



Source: Coty Investor Presentation, July 9, 2015

3.13 The largest component of Coty’s growth will stem from the acquisition of a new segment which creates an attractive new category for Coty: the largest of the Target Businesses is the hair care, colouring and styling business in which Coty is not currently active. The Target Businesses will be integrated within a new divisional structure – Fragrance/Skin, Colour, Salon – each run by a highly focused, independent and fully dedicated organisation. Post transaction Coty will act to increase the focus and understanding of consumers and customers leading to better products and services.

3.14 The Proposed Transaction also changes Coty’s geographical footprint and provides scale in large new beauty markets outside Europe (e.g. Brazil, Japan) with significant growth potential. The combination of complementary geographic footprints will allow Coty to cross-sell the respective strengths of its businesses into new territories and to offer consumers more choice and innovation.

3.15 The Proposed Transaction is also expected to lead to synergies allowing Coty to provide customers with better products at lower prices.

Other competition agencies that are being notified

3.16 Details of other competition agencies that are or will be notified of the Proposed Transaction, and the date on which those agencies were, or will be, notified are set out in **Confidential Appendix 3**.

4. THE ACTIVITIES OF THE PARTIES TO THE TRANSACTION

The applicant

- 4.1 Coty is a legal entity incorporated under the laws of the State of Delaware, USA, having its registered office in New York City, USA. Coty is a publicly traded stock company listed on the New York Stock Exchange. Coty is the parent company of the Coty Group.
- 4.2 The Coty Group is a global beauty products manufacturer. Its main products are fragrances, colour cosmetics and skin & body care products. Coty's product offerings include:
- (a) fragrances marketed under brands such as adidas, Calvin Klein, Chloé, Davidoff, Marc Jacobs, and Playboy;
 - (b) colour cosmetics brands such as Astor, Bourjois, OPI, Rimmel and Sally Hansen; and
 - (c) skin & body care brands such as philosophy and Lancaster.
- 4.3 Coty's turnover in 2014 amounted to approximately USD 4.7 billion. Coty's manufacturing facilities are located in Ashford (the UK), Granollers (Spain), Chartres (France), Monaco, Jiangsu Province (China), Sanford (USA), Los Angeles (USA) and Phoenix (USA).
- 4.4 Further information on Coty is available on its website: <http://www.coty.com>
- 4.5 JAB is currently acquiring additional shares of Coty, and Coty is currently repurchasing its outstanding shares, in each case through a coordinated plan of market purchases. Immediately prior to commencing such market purchases, JAB held a majority stake of 73% of the shares and 97% of the votes in Coty, and JAB expects to hold as much as 78% of the shares and 97% of the votes in Coty after all such market purchases are completed.
- 4.6 JAB is a privately held group focused on long term investments in companies with premium brands in the fast moving consumer goods sector. Its turnover in 2014 amounted to about USD 10.4 billion. JAB's portfolio comprises the following companies and their respective groups: Coty; JAB Luxury (a luxury leather goods company with brands such as Jimmy Choo, Belstaff and Bally) and JAB Forest B.V. (a holding company for activities in the coffee and tea business as well as the fast casual restaurant business). The JAB Group has a minority interest in Reckitt Benckiser Group PLC and Indivior PLC, as well as other companies. The companies relevant to the Proposed Transaction are all within the Coty group. As the activities of JAB Luxury and JAB Forest B.V. are unrelated to the beauty sector, JAB does not propose to give further details at this stage on the corporate structure or entities within each of these groups.⁴ Neither JAB nor any of its owners or managers has control or decisive influence in any other beauty business.
- 4.7 Coty does not have any employees in New Zealand. It imports and distributes its products through its New Zealand distributor, CS Company.

⁴ For the sake of completeness, Jimmy Choo has licensed its brand to a third party fragrance producer to produce and distribute Jimmy Choo fragrances.

- 4.8 CS Company is a multi-brand distributor and specialist marketer of cosmetics, fragrances and toiletry brands in New Zealand.
- 4.9 It has developed specialist divisions – CS Prestige, CS Beauty and CS Salon to ensure each category is uniquely represented, marketed and serviced.
- 4.10 CS Company distributes and markets the following brands in New Zealand:

Table 2

Category	Brands
Cosmetics / Skincare	Covergirl, Cutex, Eye of Horus, Fuss Free Naturals, Jurlique, Max Factor, Natio, No Bleeding Lips, Olay, OPI, Rimmel London, Sally Hansen, Yes To
Fragrance	Balenciaga, Bulgari, Calvin Klein, Chloe, Davidoff, Dolce & Gabbana, Fendi, Givenchy, Gucci, Guess, Hugo Boss, Joop, Jovan, Kenzo, Marc Jacobs, Roberto Cavalli, Vera Wang, Celebrity Fragrances
Hair / body	Adidas, Braun, Fudge, Gillette, Head & Shoulders, Pantene, Playboy, RockTape, St Tropez, Vicks
Home	Bosisto's, Duracell

4.11 [] A copy of the distribution agreement between Coty and CS Company is included as **Confidential Appendix 4**.

4.12 Almost all of Coty's brands are supplied in New Zealand, excluding those where the small size of the New Zealand market does not warrant the entry of the brand, or where the brand is considered too "niche".

The other party

4.13 P&G is a global manufacturer of consumer goods. Its headquarters are located in Cincinnati, USA and its shares are listed on the New York Stock Exchange. Approximately 89% of P&G's shares are owned by institutional investors and mutual funds, with Vanguard Group Inc being the largest shareholder with approximately 6% of outstanding shares.⁵

4.14 P&G's products are sold in more than 180 countries worldwide, with North America, Europe and Asia being the core markets. Manufacturing facilities exist in approximately 70 countries. P&G's second biggest base after the U.S. is situated in Germany. The

⁵ <http://www.pginvestor.com/institutionalownership.aspx?iid=4004124>

P&G portfolio includes brands like Head & Shoulders, Oral-B, Ariel, Pantene, Febreze and Pampers, 23 of those with annual sales of USD 1 billion.

4.15 P&G is structured into four global business units:

- (a) **Global Fabric and Home Care:** This unit comprises a variety of: (i) fabric care products, including laundry detergents, additives and fabric enhancers; (ii) home care products, including dishwashing liquids and detergents, surface cleaners and air fresheners. Within this segment, P&G's top brands are Ambi Pur, Ariel, Lenor, Fairy, Febreze, Dawn, Downy, Gain and Tide.
- (b) **Global Beauty:** This unit comprises beauty care (with products ranging from deodorants to cosmetics to skin care), hair care and colour prestige and salon professional. Within this segment, P&G's top brands are Head & Shoulders, Olay, Pantene and Wella.
- (c) **Global Baby, Feminine and Family Care:** In baby care, P&G focuses mainly on diapers, pants and baby wipes. Feminine care includes pads, tampons and liners. P&G's family care business is predominantly a North American business consisting largely of the Bounty paper towel and Charmin toilet paper brands. P&G's main brands are Always, Bounty, Charmin, and Pampers.
- (d) **Global Health and Grooming:** This unit includes oral care, personal health care, and grooming. Oral care includes toothpaste and toothbrushes (manual and electric). In personal health care, P&G is active in various OTC products, including non-prescription heartburn medications (Prilosec OTC) and in respiratory treatments (Vicks). Nearly all of P&G sales outside the USA in personal health are generated through the PGT Healthcare partnership with Teva Pharmaceuticals Ltd. Grooming includes blades and razors, electric hair removal devices, face and shaving products and home appliances. The main brands in these segments include Crest, Oral-B, Vicks, Braun, Fusion, Gillette, and Mach3.

4.16 Further information on P&G is available on its website: <http://www.pg.com>

4.17 The Target Businesses are comprised of:

- (a) the fragrances business marketed under the brands Alexander McQueen, Bruno Banani, Dolce&Gabbana, Escada, Gabriela Sabatini, Gucci, Hugo Boss, James Bond 007, Lacoste, Mexx and Stella McCartney;
- (b) the colour cosmetic business with the brands Cover Girl and Max Factor; and
- (c) the professional hair colouring, styling, care (shampoo, conditioner) and perming businesses as well as parts of its retail hair colouring and styling business. Brands include Wella, Clairol, SEBASTIAN, VS, Londa, NIOXIN, and Silverkin.

4.18 In financial year 2014/2015, these businesses together had sales of approximately USD 5.51 billion. The Target Businesses' manufacturing facilities for fragrances are located in Seaton Delaval (England) and Cologne (Germany) and in Hunt Valley (Maryland, US) and Nenagh (Ireland) for colour cosmetics. The hair care business has manufacturing facilities in Germany, France, Russia, Thailand and Mexico.

4.19 In New Zealand P&G imports and distributes fragrances and nail products through its New Zealand distributor, CS Company. Copies of the distribution agreements between P&G and CS Company are included as **Confidential Appendix 5**. Procter & Gamble

Distributing New Zealand Ltd imports and distributes other products not relevant to the Proposed Transaction.

Horizontal overlap between the parties

- 4.20 Coty and the Target Businesses participate in a number of consumer goods segments – colour cosmetics, hair care, deodorants and fragrances – with limited overlaps.
- 4.21 In New Zealand, the overlap in colour cosmetics is insignificant. The market leaders are, based on 2014 retail sales, L'Oréal (24%), Estée Lauder (20%) and Revlon (14%). P&G has around 8% market share, and Coty less than 2%.
- 4.22 Coty is not present in hair care, so the acquisition of P&G's hair care brands will not result in any horizontal overlap.
- 4.23 The Target Businesses do include some minor sales of deodorants, shower gel and body care products generated as ancillary products. Those products (whether sold independently or as part of gift sets) result in very minor overlaps with Coty.
- 4.24 The primary overlap between Coty and the Target Businesses in New Zealand is in the wholesale distribution and sale of fragrances and nail products. This overlap is explained in detail in the competition assessment section of this Notice.
- 4.25 We provide in Appendices 6 to 10:
- (a) a copy of, or link to, the most recent management accounts for the relevant New Zealand businesses;
 - (b) each party's total New Zealand sales revenues for the relevant businesses;
 - (c) the names and contact details for the parties' main competitors in New Zealand, for the relevant businesses;
 - (d) the names and contact details of any trade or industry associations in which one or both of the merging parties participate; and
 - (e) the names and contact details for each party's key customers for the relevant businesses in New Zealand, and the revenue earned from each in the last financial year.

5. THE BEAUTY INDUSTRY

Overview

- 5.1 The global beauty industry (including New Zealand) is characterised by a large number of competitors at both the manufacturing and retail levels. It is a dynamic industry with hundreds of new products launched every year across all categories (skincare, haircare, colour cosmetics, fragrances, personal hygiene, oral cosmetics).
- 5.2 Production and supply of beauty products including fragrances and nail products takes place on a global scale. According to the Cosmetic Toiletry and Fragrance Association of New Zealand (**CTFA**), around 95% of cosmetic, toiletry and fragrance products sold in New Zealand are imported.⁶ These products are manufactured in Europe, USA, Canada or Australia, or in other jurisdictions under licence.

Industry participants

- 5.3 In addition to the merger parties, other global participants in the beauty industry include L'Oréal, Estée Lauder, Avon, Chanel, Shiseido, LVMH and Puig with leading brands such as L'Oréal Paris, Clinique, Anew Beauty, Chanel, Jean Paul Gaultier, Givenchy Parfums, Armani, Paco Rabanne, Maybelline, and Dior.
- 5.4 Some of these global companies (such as L'Oréal and Estée Lauder) have a local presence in New Zealand while others (including the merger parties) use local distributors. New Zealand distributors of fragrances and colour cosmetics include CS Company, BDM Grange Limited and Wilson Consumer Products.
- 5.5 The CTFA is the incorporated body representing cosmetic, toiletry and fragrance businesses in New Zealand. Membership is voluntary and governed by a Code of Ethics for market conduct. Further information on the CTFA is available on its website www.ctfa.org.nz.

⁶ Cosmetics, Toiletry and Fragrance Association of New Zealand, Submission for the Standards and Accreditation Bill to the Commerce Select Committee, December 2014.

6. MARKET DEFINITION

- 6.1 Coty and the Target Businesses do not consider it necessary to reach a final conclusion on the precise market definition for the purpose of the notification process, since no competition concerns arise under any plausible market definition. As outlined below, we have nonetheless provided information on the narrowest market definition available for the purposes of assessing the likely competitive impact of the Proposed Transaction.
- 6.2 We do not comment on the hair care and deodorant consumer goods segments, as no (or very minor) horizontal overlap occurs in those segments. We therefore focus on the two areas (men's prestige fragrances and nail products) where there is a greater degree of horizontal overlap.

Fragrances

Product Dimension

- 6.3 The product dimension of the market comprises fragrances for men and women, whether mass market or prestige brands.

Mass vs. prestige

- (a) There is a high degree of supply-side substitutability, since prestige and mass fragrances consist of the same raw materials and are produced using the same manufacturing methods; indeed, a large number of suppliers supply both prestige and mass fragrances.
- (b) From the demand-side perspective, there is also a high degree of substitutability since there is an increasing convergence of retail channels, with selective retailers also selling mass brands, and pharmacies up-scaling their offering to include classic prestige brands.
- (c) The increasing convergence of retail channels is fuelled by the "grey market". Many prestige products are sold outside the selective channels authorised by the producers, at substantially reduced prices, even below prices of many mass brands. Retailers such as unauthorised online retailers, source their products from wholesalers and other sources outside of the producers and their authorised network. Also, higher end mass products can be priced as high as or higher than entry level prestige products, especially when taking into account the pricing pressure exerted by grey market products.
- (d) Most mass and prestige fragrances are also substitutable for end-consumers as brand image and price are only some of the points on which fragrances compete – smell, packaging and novelty are also important. This indicates that mass and prestige fragrances are also substitutable for retailers, since their demand is determined by the demand of the end-consumers.

Male and female

- (a) Most fragrance brands have both female and male lines and increasingly, unisex fragrances are being offered. There are only a small number of brands that are exclusively used for a female or a male fragrance.

- (b) The Parties' largest brands, such as adidas, Bruno Banani, Calvin Klein, Dolce & Gabbana, Gucci, Hugo Boss, Lacoste, Escada, James Bond, Mexx, Marc Jacobs, and Playboy are all available in male and female lines.
 - (c) The same is true for the majority of competitor brands on the market such as Armani, Azzaro, Burberry, Chanel, Diesel, Dior, Issey Miyake, Jean Paul Gaultier, Paco Rabanne, Prada, Puma, S. Oliver, and Tommy Hilfiger.
 - (d) The supply-side substitution arguments listed at 6.3(a) above equally apply to male and female fragrances.
 - (e) End consumers expect Coty's and the Target Businesses' retailer customers to carry all product lines. Retailers typically buy one brand across all product lines, and negotiate business conditions for the entire brand assortment.
 - (f) Negotiations between Coty and its retailers tend to focus on particular brands and line characteristics, not male or female fragrance categories. In both prestige and mass fragrances, there is no specific male or female focus.
- 6.4 The horizontal overlap in the fragrances market does not raise competition concerns. Based on the value of 2014 sales, the merged entity would have an approximate 24% market share, with its two strongest competitors, Elizabeth Arden and L'Oreal Group each with an 18% share.
- 6.5 We are however aware that the approach of the Commission is to assess the competition effects within the most narrowly-defined market available, on the basis that *"if competition concerns are not identified within the narrowly-defined market they are unlikely to arise in a broadly-defined market"*.⁷
- 6.6 Accordingly, in the competition assessment section of this Notice we consider the competitive effects in the market segment for men's prestige fragrances, which is the only segment of the fragrance market in which any significant horizontal overlap occurs.

Functional Dimension

- 6.7 Both Coty and P&G import and distribute their fragrances and nail products through the same New Zealand distributor, CS Company. In smaller markets (such as New Zealand and Australia) it is not uncommon for other competitors to use the same distributor.
- 6.8 The appropriate functional level is therefore the wholesale distribution of fragrances to retail outlets.

Geographic Dimension

- 6.9 The geographic scope of the market is national, as fragrances are supplied and advertised on a national basis.

Nail Products

Product Dimension

⁷ Reckitt Benckiser PLC and Boots Healthcare International Ltd, Decision 567, 30 November 2005, paragraph 44.

- 6.10 The appropriate product dimension of the market comprises all nail products, including nail colour (enamel), nail care (cuticle care and strength and growth applications) and nail accessories (nail stickers, nail pens, glitters, charms etc).
- 6.11 “Nail-only” brands (i.e. brands which are exclusive to nail products, covering nail care and nail colour products, and sometimes nail accessories) and colour cosmetic brands generally offer products across all three sub-categories and retail outlets typically stock the full range of nail products across all three sub-categories.

Functional and Geographic Dimensions

- 6.12 As nail products are imported and distributed in the same manner as fragrances discussed above (at 6.7 – 6.9), the functional and geographic dimensions of the nail products market will be the same as that for fragrances – namely, national wholesale and distribution to retail outlets.

7. COMPETITION ASSESSMENT

- 7.1 The Proposed Transaction would not have the effect or likely effect of substantially lessening competition in any market. In the narrowest possible segmentation – men’s prestige fragrances and nail products – there are a large number of competing suppliers, barriers to entry are low, and rights holders exert countervailing power.
- 7.2 Market shares based on Euromonitor International’s Retailing Global Passport are set out in the below tables.

Table 3

Men’s Prestige Fragrances			
Company	Major Brands ⁸	Segment Share in 2014	
		Retail Sales Volume (in USD ‘000)	%
L’Oréal Groupe	Giorgio Armani, Diesel, Ralph Lauren, Yves Saint Laurent, Kouros	8,806.40	36
Coty Inc	Calvin Klein, Cerruti	4,601.10	19
Procter & Gamble Co	Hugo Boss ⁹	3,537.40	15
Merged Entity		8,138.5	34
Shiseido Co Ltd	Jean Paul Gaultier, Issey Miyake	1,979.00	8
Elizabeth Arden Inc	Rocawear, Usher	1,484.20	6
Puig SL	Paco Rabanne	865.80	3
LVMH Moët Hennessy Louis Vuitton SA	Christian Dior	544.20	2
Estée Lauder Cos Inc	Aramis, Tommy Hilfiger	420.50	1
Others		2,498.4	10
TOTAL		24,737.00	100

⁸ Only major brands are listed. The Euromonitor International’s Retailing Global Passport records sales figures by company and major brands. Brands which represent a small proportion of a company’s total sales are recorded as “others”.

⁹ In addition to Hugo Boss, the Target Business also sells men’s prestige fragrances under the brands Dolce & Gabbana, Gucci and Lacoste.

Table 4

Nail Products			
Company	Major Brands ¹⁰	Segment Share in 2014	
		Retail Sales Volume (in USD '000)	%
Coty Inc	OPI, Sally Hansen	2,346.10	27.5
Procter & Gamble Co	Max Factor, Cover Girl	554.50	6.5
Merged Entity		2,900.6	34
L'Oréal Groupe	Gemey/Maybelline/Jade, L'Oréal Paris, Lancome, The Body Shop, Yves Saint Laurent	1,859.90	22
Revlon Inc	Revlon	1,279.70	15
Avon Products Inc	Avon	757.30	9
Mary Kay Inc	Mary Kay	230.30	3
Estée Lauder Cos Inc	Estee Lauder, Clinique	111.80	1
Cosnova GmbH	Essence	56.30	0.5
Forever Living Products International LLC	Sonya	42.70	0.5
Melaleuca Inc	Nicole Miller, Sei Bella	42.70	0.5
Others		1250.2	14.5
TOTAL		8531.5	100

Men's prestige fragrances

- 7.3 Coty is currently the second largest supplier of men's prestige fragrances in New Zealand representing 19% of retail sales in 2014, according to Euromonitor International's Retailing Global Passport.¹¹ It distributes fragrances under brands such as adidas, Calvin Klein, Cerruti, Chloé, Davidoff, Marc Jacobs, and Playboy.
- 7.4 This share will increase to 34% post transaction, with the addition of the Target Business, which is currently the third largest supplier of men's prestige fragrances. The Target Business' fragrance brands sold in New Zealand are Dolce & Gabbana, Escada, Gucci, Hugo Boss, James Bond 007, Lacoste, and Stella McCartney.
- 7.5 The merged entity will continue to face strong competition from the market leader, L'Oréal (36% of 2014 retail sales) whose prestige brands include Giorgio Armani, Diesel, Ralph Lauren, Yves Saint Laurent and Kouros, and a number of smaller competitors

¹⁰ Only major brands are listed. The Euromonitor International's Retailing Global Passport records sales figures by company and major brands. Brands which represent a small proportion of a company's total sales are recorded as "others".

¹¹ All market shares are based on Passport, which is the best estimate available of retail sales by category.

- (albeit well-established, significant and globally recognised businesses) including Shiseido (8%) and Elizabeth Arden (6%).
- 7.6 The main raw materials and products that Coty and P&G source from third parties and use as inputs for their fragrance products include essential oils, alcohol, specialty chemicals, dispensing systems (pumps), glass bottles, caps for fragrances, colour components and tubes.
- 7.7 Coty and P&G source these raw materials from suppliers, and then finalise the manufacturing process (either themselves or through third parties to whom they outsource the production of perfumes and cosmetics) before selling the products to retailers who then make them available to consumers.
- 7.8 Perfume suppliers typically either distribute their products through their own network of local subsidiaries, or appoint local distributors or commercial agents, who will then resell the products to local retailers. In New Zealand, because of the small size of the market, Coty and P&G (as well as many competitors) use a local distributor.
- 7.9 Coty and its distributor work together to determine which brands would sell best in a particular distribution channel. The distribution channels for “ultra-prestige”; “prestige” and “mass” brands differ. For example, an “ultra-prestige” brand like Bottega Veneta might be distributed only to department stores such as Smith & Caughey’s and Kirkcaldie & Stains. A “mass brand” like Old Spice might be distributed to pharmacies only.
- 7.10 Coty makes the final decision on where and how its product range will be distributed, subject to guidelines issued by the brand owners.
- 7.11 As noted above, Coty and P&G use the same distributor in New Zealand, and this arrangement is likely to continue post transaction.

Nail products

- 7.12 Coty is the leading supplier of nail products in New Zealand, representing 28% of retail sales in 2014. It distributes “nail-only” brands OPI, Sally Hansen and Cutex, as well as Bourjois and Rimmel (colour cosmetics brands with a range of nail colour products).
- 7.13 This share will increase to 34% with the acquisition of the Target Businesses. While the Target Businesses do not include any “nail only” brands, its colour cosmetic brands Max Factor and Cover Girl include a range of nail colour products.
- 7.14 The merged entity will continue to face strong competition from L’Oréal, (22% of 2014 sales) whose brands include L’Oréal Paris, Lancome, The Body Shop, Yves Saint Laurent and Maybelline, Revlon (15%) and Avon (9%), and a large number of smaller competitors.

Existing competition

- 7.15 The merged entity will continue to be constrained post transaction (in both the men’s prestige fragrance and nail product segments) by many existing and potential competitors. Existing competitors include a number of significant, scaled global entities (such as L’Oréal, Estée Lauder, Avon, Chanel, Shiseido, LVMH, Puig) with well established brands and widespread recognition. These global entities produce significant volumes of product which they could easily divert to the comparatively small New Zealand market in response to any exercise of market power by the merged entity.

- 7.16 In addition, there are many smaller competitors and an increasing trend of retailers (e.g. Countdown and Zara) establishing their own retailer brands of fragrance and colour cosmetics. There is also significant competition through direct selling. As these new sources of competition increasingly acquire market share, the ability of the merged firm to increase prices or decrease quality without significant competitive detriment is significantly diminished. To remain competitive, manufacturers must innovate constantly to meet consumer demand for more efficient products and novel solutions.
- 7.17 The beauty industry is generally characterised as innovative and dynamic. Within the relevant segments, new brands are being released with increasing regularity and older lines are deleted. According to CTFA, there are more than 50 fragrances launched each year and around 15 are withdrawn making it a dynamic and changing market.¹² Similarly, in the nail products category there are very frequent product launches (e.g. new quick dry, long wear products) and new entry.
- 7.18 Consumers who purchase fragrances and colour cosmetics (including nail products) have low brand loyalty and regularly switch between different brands. Customers often try new fragrance and colour cosmetic products and are not limited to only the high or low end purchasing both “prestige” and “mass” products. In the experience of the merger parties, there is no particular closeness of competition between certain fragrance or nail products brands.
- 7.19 Product improvements are constantly in development and new innovations are means by which consumers are able to benefit from competitive tensions at the global level. These innovations are introduced to New Zealand consumers but reflect competitive tensions globally. Accordingly, shares and market position in New Zealand does not fully reflect the competitive environment in which the merger parties will operate.
- 7.20 Further, at the retailer level, there is little, if any costs in switching product with much of the marketing and promotion undertaken by the distributor and/or manufacturer. Accordingly, the threat of loss of market shares to significant, scaled, established global competitors will continue to place a significant competitive constraint on the merged entity post transaction.

Barriers to entry

- 7.21 Barriers to entry or expansion in both men’s fragrances and nail products are so low as to be insignificant. Specifically:
- (a) There are no regulatory barriers including to importation of these products;
 - (b) Entry does not require any significant investment in New Zealand. The merger parties both utilise the services of a local distributor and there are a number of local distributors who have the ability to expand their brand portfolio should the appropriate incentives arise;
 - (c) A new entrant would be able to access traditional bricks and mortar channels to consumers as well as direct to market models and other newer non-traditional modes.

¹² Cosmetics, Toiletry and Fragrance Association of New Zealand, Submission for the Standards and Accreditation Bill to the Commerce Select Committee, December 2014.

7.22 Fragrances and nail products offered for sale in New Zealand are almost entirely imported (circa 95%) evidencing the ease of importation. Accordingly, there are no obstacles to entry or expansion and the LET test is satisfied.

Countervailing power

7.23 While Coty and P&G own the brands of colour cosmetics products (including nail products) that they sell, for the most part they do not own the fragrance brands. Instead, they have licence arrangements in place with the owners of fashion, lifestyle, and celebrity brands. The licensors typically receive a royalty in return for use of their trademarks and other intellectual property, which is either fixed or dependent on the level of sales achieved.

7.24 Licence agreements typically contain provisions relating to:

- (a) distribution of the product – licensors are likely to be closely involved in determining appropriate distribution channels for fragrances sold under their brand to ensure that the distribution channel is reflective of the licensor’s brand image (e.g. luxury);
- (b) marketing and advertising – licensors are typically involved in determining a marketing, advertising and promotion strategy, including the approval of advertising materials, to ensure that the marketing of the fragrance is consistent with the core business of the licensor.

7.25 Licence agreements can (but do not always) include provisions relating to recommended retail pricing (in the interest of brand positioning).

7.26 Licence arrangements are subject to renegotiation from time to time on a global basis, so rights owners have countervailing power to ensure their brands are presented and marketed in accordance with their directions.

8. FURTHER INFORMATION

8.1 A copy of the most recent management accounts for the relevant New Zealand businesses are set out in **Confidential Appendix 6**.

8.2 Sales revenues for each party are set out in Appendix 7.

8.3 The names and contact details for the parties’ main competitors are set out in Appendix 8.

8.4 Trade or industry associations in which one or both of the merging parties participate are set out in Appendix 9.

8.5 The names and contact details of each party’s key customers are set out in **Confidential Appendix 10**.

9. CONFIDENTIALITY

9.1 Confidentiality is requested of the information in this Notice that is in bold, contained in square brackets and highlighted, and the information set out in the Confidential Appendices, on the basis that disclosure would be likely unreasonably to prejudice the commercial position of the parties providing the information.

- 9.2 Coty requests that it be notified if a request is made to the Commission under the Official Information Act 1982 for release of the information for which confidentiality has been claimed.
- 9.3 Confidential and public versions of this Notice have been provided to the Commission.

DECLARATION

I, [name of authorised person] have prepared, or supervised the preparation of, this notice seeking clearance.

To the best of my knowledge, I confirm that:

- a) all information specified by the Commission has been supplied;
- b) if information has not been supplied, reasons have been included as to why the information has not been supplied;
- c) all information known to me that is relevant to the consideration of this notice has been supplied; and
- d) all information supplied is correct as at the date of this notice.

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

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of the company and am duly authorised to submit this notice.

Name and title of person authorised to sign:

Signature

Date

PUBLIC VERSION

CONFIDENTIAL APPENDIX 1

TRANSACTION AGREEMENT DATED JULY 8, 2015

PUBLIC VERSION

CONFIDENTIAL APPENDIX 2

P&G ORGANISATION CHART

[

]

PUBLIC VERSION

CONFIDENTIAL APPENDIX 3

OTHER COMPETITION AUTHORITIES THAT ARE BEING NOTIFIED OF THE PROPOSED TRANSACTION AND WHEN THEY WERE OR WILL BE NOTIFIED

[

]

PUBLIC VERSION

CONFIDENTIAL APPENDIX 4

DISTRIBUTION AGREEMENT BETWEEN COTY AND CS COMPANY

PUBLIC VERSION

CONFIDENTIAL APPENDIX 5

DISTRIBUTION AGREEMENTS BETWEEN P&G AND CS COMPANY

PUBLIC VERSION

CONFIDENTIAL APPENDIX 6

COPIES OF THE MOST RECENT MANAGEMENT ACCOUNTS FOR THE RELEVANT NEW ZEALAND BUSINESSES

[

]

APPENDIX 7**TOTAL NEW ZEALAND SALES REVENUES FOR COTY AND P&G IN THE RELEVANT MARKETS¹³**

Figures in USD for calendar year 2014

Men's prestige fragrances

Party	Sales Revenues
Coty	4,601,000
P&G	3,537,000

Nail products

Party	Sales Revenues
Coty	2,346,000
P&G	554.000

¹³ Based on figures from the Euromonitor International's Retailing Global Passport, which is the best estimate available of retail sales per category.

APPENDIX 8**NAMES AND CONTACT DETAILS FOR COTY AND P&G'S MAIN COMPETITORS IN NEW ZEALAND****Men's prestige fragrances**

Name	Contact Details
L'Oréal NZ Limited	PO Box 112-143 Level 2, 632 Great South Rd Penrose Auckland 1642 bexpert@nz.loreal.com
Shiseido (NZ) Ltd	customerservice@shiseido.co.nz 0800 744 734
Elizabeth Arden (New Zealand) Limited	Private Bag 99923 Newmarket, Auckland 1149 New Zealand consumer@elizabetharden.co.nz
Puig SL	Plaza Europa 46/4808902 L'Hospitalet de Llobregat Barcelona +34 934007000
LVMH Moët Hennessy Louis Vuitton SA	LVMH Moët Hennessy - Louis Vuitton 22 Avenue Montaigne 75008 Paris France +33 (0)1 44 13 22 22
Estée Lauder, Inc	elonlineservice@nz.estee.com

Nail products

Name	Contact Details
L'Oréal NZ Limited	PO Box 112-143 Level 2, 632 Great South Rd Penrose Auckland 1642 bexpert@nz.loreal.com
Revlon Inc	0800 698 030

Avon Products Inc	PO Box 180 Dee Why NSW 2099 Australia 0800 220 130
Mary Kay Cosmetics (New Zealand) Inc	PO Box 97211, Manukau City Auckland, 2241 New Zealand 0800 627 952
Estee Lauder Cos Inc	elonlineservice@nz.estee.com
Forever Living Products International LLC	278 Manukau Road Auckland, New Zealand, 1003 09 309 2563 flpnz@foreverliving.co.nz
Melaleuca Inc	Ground Floor, 826 Whitehorse Road, Box Hill, VIC 3128 Australia 0800 083 399
Tupperware Brands Corp	14901 S. Orange Blossom Trl. Orlando, FL 32837 comments@tupperware.com
Shiseido (NZ) Ltd	customerservice@shiseido.co.nz 0800 744 734
Clarins SA	customerrelations@clarins.net
Amway Corp	nzfeedback@amway.co.nz 0800 611 611

APPENDIX 9

TRADE OR INDUSTRY ASSOCIATIONS IN WHICH COTY AND/OR P&G PARTICIPATE

Coty does not participate in any trade or industry association in New Zealand.

P&G is a member of the New Zealand Food and Grocery Council (**NZFGC**). Contact details for NZFGC are:

Level 6, Dimension Data House
99-105 Customhouse Quay
Wellington 6146
New Zealand
Phone: 04 470 7725

CONFIDENTIAL APPENDIX 10

NAMES AND CONTACT DETAILS FOR KEY CUSTOMERS FOR THE RELEVANT BUSINESSES IN NEW ZEALAND, AND THE REVENUE EARNED FROM EACH IN THE LAST FINANCIAL YEAR.

[

]