

***Case No COMP/M.3732 -
PROCTER & GAMBLE /
GILLETTE***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(2) NON-OPPOSITION
Date: 15/07/2005

***In electronic form on the EUR-Lex website under document
number 32005M3732***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15/07/2005

SG-Greffe(2005) D/203682

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) with 6(2)
DECISION

To the notifying party :

Dear Sir/Madam,

**Subject: Case No COMP/M.3732 Procter & Gamble /Gillette
Notification of 27.05.2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 27 May 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking The Procter & Gamble Company (“P&G”, USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking The Gillette Company (“Gillette”, USA) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. P&G is a global manufacturer of consumer goods, including household care, beauty care, health, baby and family care products.
4. Gillette is a multinational manufacturer of consumer products, active in oral care, small electric appliances, portable power (batteries), blades and razors and personal care.

II. THE OPERATION AND THE CONCENTRATION

¹ OJ L 24, 29.1.2004 p. 1.

5. The proposed concentration will be effected through a merger between a wholly-owned subsidiary of the Procter & Gamble Company, Aquarium Acquisition Cooperation, formed for the purpose of the contemplated merger, with the Gillette Company. As a result, Gillette will continue as the surviving operating unit and will become a wholly-owned subsidiary of P&G. The operation consist in the acquisition of sole control of Gillette and thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. P&G and Gillette have a combined aggregate world-wide turnover of more than EUR 5 billion (P&G EUR 41,327.27 million, Gillette EUR 8,422.13 million). Each of the undertakings has a Community-wide turnover in excess of EUR 250 million (P&G EUR [...], Gillette EUR [...]), but they do not each achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has Community dimension.

IV. COMPETITIVE ASSESSMENT - HORIZONTALLY AFFECTED MARKETS

A. Toothbrushes

1. Product market definition

7. The Commission has previously considered the relevant product market for manual toothbrushes as separate from powered brushes (i.e. electric and battery driven toothbrushes), but left the exact product market definition open². In the notification, the parties argued that since then market conditions have changed and the market for toothbrushes should be divided into two distinct product markets; on the one hand the combined manual and battery toothbrushes market and on the other hand rechargeable toothbrushes market.

a) Separate market for manual toothbrushes

8. According to the parties, manual and battery toothbrushes should belong to the same relevant product market because both toothbrush types were low priced, technologically unsophisticated and fully portable. The Commission's investigation in the present case, however, has confirmed that manual toothbrushes exert only negligible competitive constraints on the other toothbrushes markets and have therefore to be assessed separately from battery and rechargeable toothbrushes³.
9. From a *demand side point of view*, prices for manual and battery toothbrushes vary significantly, with an average price for manual toothbrushes of about €2 and €8 for battery toothbrushes. Unlike for powered toothbrushes, there are generally no additional replaceable heads and batteries sold for manual toothbrushes. Moreover, producers have reported that dentist recommendations are more important for powered brushes, because

² Case COMP/M.2192 - SmithKline Beecham/Block Drug, para 14.

³ Case COMP/M.2192 - SmithKline Beecham/Block Drug, para 14.

consumer knowledge for these products is still less developed compared to manual toothbrushes.

10. From a supply side point of view, the production of powered brushes involves a different production technology and different know-how than the production of manual brushes. For technological reasons (use of engines, different head types,), manual and powered toothbrushes are not produced on the same factory lines. Both rechargeable and battery toothbrushes are subject to specific regulatory requirements for electrical appliances. As a result, fewer suppliers are active in the production of powered toothbrushes.

b) Battery and rechargeable toothbrushes

11. Regarding the market(s) for other toothbrushes (battery and rechargeable toothbrushes), a number of arguments militate in favour of two separate relevant markets. Most customers said that they would not switch to stocking rechargeable toothbrushes if prices of battery toothbrushes were increased significantly. Furthermore, brushing efficiency of rechargeable brushes seems to be superior to battery brushes (mainly because battery brushes lose power over their lifetime).
12. However, since the rechargeable segment is split between low end and high end (premium) products, any separation between battery and rechargeable toothbrush markets is blurred. There is no substantial price difference between low end rechargeable and similar battery toothbrushes, but a continuum of prices for both types. Gillette (being rather on the premium battery market) has an average price for battery toothbrushes of €10 (varying between €5 and €20)⁴. Prices for low end rechargeable toothbrushes start generally around €20 and some models are even sold at a lower price; prices for sophisticated powered brushes can vary typically between €40 to €150 (with high prices only for high premium rechargeable toothbrushes).
13. Moreover, both toothbrushes are sold together in the same product category and, in most stores, on the same shelves. From their appearance, they are difficult to distinguish for the end consumers. Both types may have replaceable head-ends which can generally be used for battery and rechargeable brushes of one brand⁵. As concerns sales channels, both types of toothbrushes are sold in both the electrical goods channel and the food and supermarket channel, although in different proportions⁶.
14. From a supply-side perspective, the production of rechargeable toothbrushes is not fundamentally different from the production of battery toothbrushes, since it requires

⁴ To this initial price, the price for replacement batteries should be added for matter of comparison, considering that battery toothbrushes provide the consumer with a satisfying brushing for about one month. The average retail price in Europe for batteries is €1.5 per unit.

⁵ As replaceable head ends account for an important part of the revenues for powered toothbrushes (about [35-45]% of the overall value), the boundaries between rechargeable and battery toothbrushes are even more blurred. It has to be remembered that not all battery toothbrushes have replaceable head ends while rechargeable batteries are systematically equipped with replaceable head ends.

⁶ In particular, rechargeable brushes are not exclusively sold in the electrical goods channel: In Germany, e.g. [50-60]% of all rechargeable toothbrushes are sold in the food and pharmaceutical channel and only [40-50]% are sold in the electrical goods channel. In France, even [70-80]% are sold in the food channel.

basically replacing the batteries with rechargeable batteries and a charging station, a technology which is available on the market. Significant additional know-how is only necessary for the production of high-end toothbrushes with sophisticated extra-features.

15. It can, however, remain open for the purpose of the assessment of the competitive situation whether battery and rechargeable toothbrushes belong to the same product market or if a joint product market for powered toothbrushes has to be defined, since the analysis of the competitive situation does not depend on either definition and competition concerns would occur under either market delineation.
16. Similarly, the Commission does not have to decide on whether replaceable head ends (“refills”) constitute a different market from battery and/or rechargeable toothbrushes. Refills are sold for most of the powered toothbrushes and fit only to handles of the same brand. Even if refills were regarded as a part of an overall powered toothbrushes market, the competitive assessment would not change significantly.

2. Geographic market definition

17. The market investigation has confirmed that the relevant geographic markets for the different types of toothbrushes are still national in scope⁷. This is mainly because European retailers still negotiate on a national level with the national sales representatives of their respective suppliers. Even bigger retailers do not negotiate with suppliers from another Member State or even on a European-wide basis. The national market delineation is further corroborated by substantially different market shares and significant price differentials between different Member States (e.g. for battery toothbrushes with prices for the same product from €1.8 to €8.2 and an average price difference of around 30% between Member States). Similarly, P&G’s and Gillette’s pricing policy is set at a national level. The market investigation has also confirmed that consumer preferences are still diverging within the EEA (e.g. Southern countries being less technology driven than Northern countries). As a result, the main competitors’ sales strategy vary in different Member States, and toothbrushes are sold under many different brand names in different Member States.

3. Competitive Analysis

a) Battery and rechargeable toothbrushes

Market Shares

18. The parties’ activities overlap significantly only on the hypothetical market for *powered* toothbrushes (battery and rechargeable toothbrushes), and in the hypothetical separate market for battery toothbrushes. Procter & Gamble (“P&G”) is currently only active in the production of battery toothbrushes (under the brand name “SpinBrush” and the co-brands “Blend-a-Dent”, “Blend-a-Med”, “Blendi”, “Crest” or “AZ”), while Gillette produces the full range of powered toothbrushes (battery and rechargeable products under the “Oral B” brand).

⁷ Case COMP/M.2192 SmithKline Beecham/Block Drug, para 31.

19. On a combined market for *powered toothbrushes* the parties would (according to their own estimates which have been largely confirmed by the market investigation) hold high market shares with significant increments in a large number of Member States.

Powered Toothbrushes
Market shares in % (value, 2004):

	Gillette	P & G	Combined	Comp #1	Comp #2
Poland	[45-55]	[20-30]	[70-80]	Colgate: [15-25]	Philips: [0-10]
Austria	[60-70]	[5-10]	[70-80]	Colgate: [5-15]	GSK: [5-15]
Italy	[50-60]	[10-20]	[70-80]	Colgate: [10-20]	Unilever: [0-10]
UK	[60-70]	[5-15]	[70-80]	Colgate: [5-15]	GSK: [0-10]
Greece	[45-55]	[5-15]	[50-60]	Colgate: [25-35]	Unilever: [5-15]
Ireland	[35-45]	[5-15]	[45-55]	Colgate: [35-45]	GSK: [5-15]
France	[35-45]	[5-15]	[40-50]	Colgate: [25-35]	Unilever: [10-20]
<i>Countries with lower increments:</i>					
<i>Netherlands</i>	[75-85]	[0-5]	[75-85]	Colgate: [5-15]	GSK: [5-15]
<i>Germany</i>	[60-70]	[0-5]	[60-70]	Priv.lab.: [5-15]	GSK: [5-15]
<i>Spain</i>	[50-60]	[0-5]	[55-65]	Colgate: [10-20]	Philips: [5-15]
EEA-wide:	[55-65]	[0-10]	[65-75]	Colgate: [5-15]	GSK/Unilever/ Philips.: [0-10]

20. If a separate *battery toothbrushes* market was defined, the parties would also hold high market shares above 40% in the following Member States:

Battery Toothbrushes
Market shares in % (value, 2004):

	Gillette	P & G	Combined	Comp #1	Comp #2
Poland	[30-40]	[35-45]	[65-75]	Colgate: [25-35]	Others [0-10]
Latvia	[50-60]	[15-25]	[70-80]	Colgate: [20-30]	Others [0-10]
Lithuania	[30-40]	[35-45]	[65-75]	Colgate: [15-25]	Others: [5-15]
Estonia	[40-50]	[20-30]	[65-75]	Colgate: [25-35]	Others: [0-10]
Italy	[25-35]	[25-35]	[55-65]	Colgate: [20-30]	Unilever: [5-15]
Austria	[30-40]	[20-30]	[55-65]	Colgate: [15-25]	GSK: [5-15]
UK	[25-35]	[20-30]	[45-55]	Colgate: [25-35]	GSK: [5-15]
Ireland	[30-40]	[5-15]	[40-50]	Colgate: [35-45]	GSK: [5-15]
Greece	[35-45]	[5-15]	[45-55]	Colgate: [25-35]	Unilever: [5-15]
Netherlands	[35-45]	[0-10]	[40-50]	Colgate: [25-35]	GSK: [20-30]
Germany	[30-40]	[5-15]	[40-50]	GSK: [15-25]	Colgate: [10-20]
EEA-wide:	[25-35]	[15-25]	[45-55]	Colgate: [25-35]	Unilever [0-10] GSK [0-10] Priv.Lab.: [0-10]

21. On a separate market for *rechargeable toothbrushes* Gillette would, in the absence of any horizontal overlap, hold market shares between [50-60]% (Portugal) and more than [90-100]% (The Netherlands, Sweden, Finland, Ireland). EEA-wide, Gillette would hold approximately [75-85]%, the next competitors only around [5-15]% (Philips) and [0-10]% (GSK) of a hypothetical rechargeable toothbrushes market.

Other factors

22. It follows from the tables above that the merging parties would hold high market shares in a large number of countries, regardless whether a small separate market for battery brushes or a bigger market for powered brushes was defined.
23. One could, however, argue that regardless of the high market shares any impediment of competition is excluded by the fact the parties' customers, mainly big retail chains, dispose of sufficient buyer power to rebut attempts of the parties to increase prices or deteriorate quality.
24. Although it is true that at least large pan-European retailers like Metro, Carrefour or Wal-Mart are customers with significant financial strength and buying power who normally look carefully at their suppliers' prices, it remains doubtful whether the big retailers' buying power is sufficient to entirely remove the existing doubts as to the strengthening of the parties position in the powered toothbrush market(s) or on the separate battery and rechargeable toothbrushes markets. While the customers' buyer power is an important mitigating factor for potential competition problems brought about by the merger, other arguments support the presumption that the high market shares indicate a competition problem in the powered toothbrush market(s). From a dynamic point of view, the relative strength of the parties in the market is further corroborated by the fact that the parties have increased substantially their EEA-wide share over the last two years (from [25-35]% in 2002 to [45-55]% in 2004 in a hypothetical battery market and from [45-55] to [65-75]% in a powered toothbrushes market) while their main competitors have lost market shares during this period.
25. In the case of a *combined* powered toothbrushes market, the merger would combine the clear market leader with the current number 3 in most markets. It would create a new oral care "giant" and eliminate a credible competitor to the market leader. In the case of *separate* markets, the merger would combine the current number 2 and 3 in the battery market, giving to the merged entity a leading position and eliminating a potential entrant to the rechargeable market.
26. Competitors have reported that the barriers to entry the market for powered toothbrushes are high compared to other consumer goods. This is not only because Oral B and P&G hold a large number of important patents for powered toothbrushes and have good access to the shelves of the retailers, but also because any new entrant to the oral care market needs to establish a good reputation for its products in order to be successful on the powered toothbrushes market. The market investigation has shown that building a competitive brand image implies not only significant promotion costs, but establishing good relations with European dentists whose recommendation is, according to the market test, a key factor for the success in the powered toothbrushes market and who currently recommend mainly "Oral B" products.
27. The competitive concerns are not limited to the very significant horizontal overlaps in the parties' battery toothbrushes activities. The concentration may also strengthen Gillette's position on the rechargeable segment/market. Many competitors have explained that the battery segment can be regarded as an "entry segment" to the more profitable rechargeable toothbrush business, since it helps acquiring the necessary knowledge on rechargeable toothbrushes. The parties' ability to offer the full range of both low-end and high-end powered toothbrushes and to use the "Oral B" brand name

for low-end products will strengthen their position on the battery segment. This could deter new entrants to the battery market, which would, subsequently, also deter new entrants to the rechargeable market (since the battery market is seen as entry segment for the rechargeable market which has even higher barriers to entry). Indeed, entry into both the battery and rechargeable toothbrushes markets could become more difficult after the merger, since a new entrant would have to compete with a “full-liner” who offers the full range of products with a well-established brand name.

28. The effects described above would not depend on whether a joint or two separate markets for powered toothbrushes were defined, since both markets would be so closely linked that the competitive dynamics remain the same.
29. On the basis of the foregoing, the Commission has serious doubts as to the compatibility of the notified concentration with the common market, in particular as concerns the possibility that it may significantly impede competition on the hypothetical market for powered toothbrushes or on separate hypothetical markets for battery toothbrushes and rechargeable toothbrushes in the common market⁸ as a result of the creation or strengthening of a dominant position.

b) Manual toothbrushes

30. On a separate market for manual toothbrushes there are several national horizontally affected markets (in value, for 2004): Austria ([25-35]%), Estonia ([35-45]%), Germany ([15-25]%), Greece ([25-35]%), Hungary ([10-20]%), Ireland ([25-35]%), Italy ([15-25]%), Latvia ([35-45]%), Lithuania ([30-40]%), Poland ([30-40]%), UK ([25-35]%). On an EEA-wide basis the combined market share of the parties would be only [15-25]%
31. In Latvia the combined market share of the parties is substantial with [35-45]% (P&G [20-30]%; Gillette [10-20]%). However, Colgate/Gaba is a very strong competitor with a market share of [25-35]%. Furthermore, well-known international competitors as e.g. J&J ([10-20]%) or GSK ([5-15]%) are also active in this market). In the future the competitors should be able to expand their position vis-à-vis the parties, since the Latvian market for manual toothbrushes has expanded by approximately 15% over the three last years. Under these market circumstances the transaction neither creates or strengthens a dominant position on the Latvian market for manual toothbrushes and does not lead to a significant impediment of effective competition.
32. In Estonia the combined market share of the parties is substantial with [35-45]% (P&G [15-25]%; Gillette [15-25]%). However, Colgate/Gaba is almost as strong as the parties with a market share of [30-40]%. Furthermore, well-known international competitors as e.g. GSK ([5-15]%) or Unilever ([0-10]%) are also active in this market. In the future the competitors should be able to expand their position vis-à-vis the parties, since the Estonian market for manual toothbrushes has expanded by around 30% over the last three years. Under these market circumstances the transaction neither creates or

⁸ As the commitments offered by the parties will remedy the parties' existing overlaps in all geographic markets in the EEA, it is, for the purpose of this decision, not necessary to identify the national markets in which the Commission raises serious doubts.

strengthens a dominant position on the Estonian market for manual toothbrushes and does not lead to a significant impediment of effective competition.

33. In Lithuania the combined market share of the parties is substantial with [30-40]% (P&G [15-25]%; Gillette [10-20]%). However, Colgate/Gaba is a very strong competitor with a market share of [25-35]%. Furthermore, well-known international competitors as e.g. GSK ([5-15]%) or J&J ([0-10]%) are also active in this market. In the future the competitors should be able to expand their position vis-à-vis the parties, since the Lithuanian market for manual toothbrushes has expanded by more than 40% over the last three years. Under these market circumstances the transaction neither creates or strengthens a dominant position on the Lithuanian market for manual toothbrushes and does not lead to a significant impediment of effective competition.
34. In Poland the combined market share of the parties is [30-40]% (P&G [5-15]%; Gillette [15-25]%). However, Colgate/Gaba is a very strong competitor with a market share of [20-30]%. Furthermore, well-known international competitors as e.g. Jordan ([15-25]%) or GSK ([5-15]%) are also active in this market. Under these market circumstances the transaction neither creates or strengthens a dominant position on the Polish market for manual toothbrushes and does not lead to a significant impediment of effective competition.
35. As the combined market share of the parties is [25-35]% in Greece, [25-35]% in Ireland, [25-35]% in the United Kingdom and [10-20]% in Hungary, and the increment over P&G's pre-merger market shares in these countries is minimal ([0-5]% in Ireland and [0-5]% in Hungary) or very small ([0-5]% in Greece and [0-5]% in the United Kingdom) and strong competitors are active in each of these countries (e.g. Unilever in Greece with [25-35]%; Colgate/Gaba in Ireland with [20-30]% and in the United Kingdom with [15-25]%) the transaction neither creates or strengthens a dominant position on these markets for manual toothbrushes and does not lead to a significant impediment of effective competition.
36. In Austria the combined market share of the parties would be [25-35]% (P&G [10-20]%; Gillette [10-20]%). Since the parties will face competition from a stronger competitor, GSK ([30-40]%) and other well-known international competitors as Unilever ([15-25]%) and Colgate/Gaba ([0-10]%), no competition concern arises in the Austrian market for manual toothbrushes.
37. In Italy the combined market share of the parties would be [15-25]% (P&G [0-10]%; Gillette [15-25]%). Since the parties will face competition from a stronger competitor, Unilever ([25-35]%) and other well-known international competitors as GSK ([5-15]%) and Colgate/Gaba ([5-15]%), no competition concern arises in the Italian market for manual toothbrushes.
38. In Germany the combined market share of the parties would be [10-20]% (P&G [5-15]%; Gillette [5-15]%). Since the parties will face competition from a much stronger competitor, Unilever ([35-45]%) and another well-known international competitor, Colgate/Gaba ([10-20]%), as well as from private labels ([20-30]%), no competition concern arises in the German market for manual toothbrushes.

B. Other oral care products

1. Toothpaste

39. In the EEA, the parties are both active in the toothpaste sector with the following brands: “Blend-a-Med”, “Blendax”, “Crest” and “AZ” (all P& G); “Oral-B”, “Rembrandt”, “Zendium” and “Amosan” (all Gillette).

a) The relevant product and geographic market

40. In a previous case the Commission has retained an overall product market for toothpaste⁹. It did not further distinguish between the product variants, ranging from the basic traditional regular/family toothpaste at one extreme of the spectrum, to the most recent innovative “whitening” and “sensitive” variants at the other extreme. From a demand side it was held that consumers adapt over time to changes in their own needs and in the range of products on offer¹⁰. From the supply side manufacturers can change production between the different variants with relative industrial and financial ease¹¹.
41. Based on the previous Commission decision the parties submit that there is an overall market for toothpaste. However, in the present case, the precise definition of the product market may be left open. Even under a narrower product market definition, distinguishing between children’s toothpaste, whitening toothpaste and sensitive toothpaste, no competition concern would arise.
42. As regards the geographic market of toothpaste, the Commission has defined national markets in its previous decision due to the following factors: (1) a large number of mainly local players, (2) the variation in market shares of the main players across different Member States, (3) the presence of different brand names, (4) national differences in oral care habits and (5) cases of significant price differences across the EEA¹².
43. The parties argue that the geographic scope of the market for toothpaste has changed over the last years and should be defined as EEA-wide. However, for the purposes of this case, the exact geographic scope of the toothpaste market(s) may be left open, since the operation does not raise competition concerns if assessed at national level.

b) Competitive assessment

44. On the overall market for toothpaste (all market shares based on value, 2004) the operation would only result in horizontally affected markets in Austria and Italy. On an EEA-level the combined market share of the parties on an overall market for toothpaste would be only [5-15]% (P&G [5-15]%; Gillette [0-10]%).

⁹ Case COMP/M.2192 – SmithKline Beecham /Block Drug, paragraph 11.

¹⁰ Case COMP/M.2192 – SmithKline Beecham /Block Drug, paragraph 9.

¹¹ Case COMP/M.2192 – SmithKline Beecham /Block Drug, paragraph 10.

¹² Case COMP/M.2192 – SmithKline Beecham /Block Drug, paragraph 30.

45. In Austria on an overall market for toothpaste the combined market share of the parties would be [15-25]% (P&G [15-25]%; Gillette [0-10]%). The parties face competition from two stronger competitors, GSK ([20-30]%) and Gebro ([15-25]%), and Unilever ([10-20]%).
46. In Italy on an overall market for toothpaste the combined market share of the parties would be [10-20]% (P&G [10-20]%; Gillette [0-10]%). The parties face competition from two stronger competitors, Unilever ([20-30]%) and Golgate/Gaba ([15-25]%), and GSK ([5-15]%).
47. If a narrower product market was defined the competitive situation would not change substantially in Austria and Italy. On a market for children's toothpaste the combined market share of the parties would be [15-25]% (P&G [10-20]%; Gillette [5-15]%) in Austria and [15-25]% (P&G [0-10]%; Gillette [10-20]%) in Italy. On a market for whitening toothpaste the combined market share of the parties would be [5-15]% (P&G [5-15]%; Gillette [0-10]%) in Austria and no increment of market shares in Italy (P&G [10-20]%). On a market for sensitive toothpaste there would be no increment of market shares in Austria (Gillette [0-10]%) and a combined market share of [0-10]% (P&G [0-10]%; Gillette [0-10]%) in Italy.
48. Given the limited presence of the parties in the toothpaste sector the concentration neither creates nor strengthens a dominant position on the markets for toothpaste and does not lead to a significant impediment of effective competition in these markets.

2. Dental floss and other interdental products

a) The relevant product and geographic market

49. Dental floss is made of nylon strings and is used to remove food particles and plaque from the division between the teeth. Dental floss can be waxed or un-waxed and is sold in different forms of thickness including regular and extra-fine. The product is available in various flavours such as cinnamon and mint and can be sold with an attachment that is either fixed ("floss pick") or battery powered to vibrate.
50. Given that dental floss is a complement rather than a substitute for brushing, dental floss should be identified as a separate product market. In addition to dental floss, the parties sell also other interdental cleaning products (such as interdental sets and dental toothpicks). These products are viewed by the parties as interchangeable from a customer's point of view. The exact market definition for interdental products can be left open for the purposes of the present case as no significant impediment of competition would occur under any market delineation given P & G's very limited presence on all possible sub-markets.
51. The parties argue that the geographic scope of the market for dental floss as other oral care products should be defined as EEA-wide. However, for the purposes of this case, the exact geographic scope of the dental floss market may be left open, since the operation does not raise competition concerns if assessed at national level.

b) Competitive assessment

52. On the market for interdental products (all market shares based on value, 2004) the operation would only result in horizontally affected markets in Germany, Italy, Sweden and on an EEA-level.
53. On an EEA-wide market for interdental products the combined market share of the parties would be [40-50]%. Although Gillette has a market share of [40-50]%, the increment by P&G would be minimal with less than [...] ([0-5]%). Therefore, the transaction does not have a significant impact on the current market structure.
54. In Germany Gillette has a market share of [50-60]% on the market for interdental products. However, the overlap is minimal with less than [...] ([0-5]% by P&G). Therefore, the transaction does not have a significant impact on the current market structure.
55. In Italy Gillette has a market share of [60-70]%. However, the increment by P&G is minimal with less than [...] ([0-5]%). Therefore, the transaction does not have a significant impact on the current market structure.
56. In Sweden the parties would have a combined market share of only [10-20]% (P&G [5-15]%; Gillette [0-10]%) facing competition from two stronger competitors, J&J ([45-55]%) and Cederroth ([20-30]%).
57. Given the limited presence of the parties in Sweden and the minimal overlaps on the markets for interdental products in Germany, Italy and EEA-wide, the concentration neither creates nor strengthens a dominant position on the markets for interdental products and does not lead to a significant impediment of effective competition.

C. Antiperspirant/Deodorants

58. In the EEA the parties are active in the sector of Antiperspirants/Deodorants (“AP/Deos”) under the following brands: “Old Spice”, “Noxzema”, “Infasil”, “Secret” (all P&G) and “Gillette”, “Right Guard”, “Natrel” (all Gillette).

1. Relevant product and geographic market

59. In general, deodorants attack malodour, while antiperspirants reduce sweat. AP/Deos can be identified in different product forms as e.g. aerosols-sprays, pump action sprays, sticks, wipes, roll-ons and creams. In previous decisions the Commission considered deodorants as a separate product market within the broader body care sector¹³ without further sub-segmenting the product market. The parties submit that consumers generally switch between AP and Deos as well as between different forms of AP/Deos. Furthermore a sub-segmentation of the market on the basis of male/female is not meaningful, particularly as there are unisex brands and fragrance-free formulations (as e.g. Gillette’s Right Guard and Natrel). Hence, a product market for AP/Deos may be defined for the purposes of the present case.

¹³ Case IV/M.630 – Henkel/Schwarzkopf, paragraph 11; see also case IV/M. 186 – Henkel/Nobel, paragraph 8.

60. In its previous decisions the Commission did not take a final view on the geographic market definition¹⁴. It acknowledged that major competitors were active in almost all Member States, companies had started using brands on a European basis and international buying organizations were founded. On the other hand the Commission emphasized that market shares and consumer preferences diverged among the various Member States. Furthermore, there were significant retail price differences across Member States.
61. However, the exact scope of the geographic market may be left open, as the transaction does not raise competition problems if assessed at national level.

2. Competitive assessment

62. On the market for AP/Deos (all market shares based on value, 2004) the operation would only result in horizontally affected markets in Greece, Hungary, Lithuania and Slovenia. On an EEA-level the transaction would result in a combined market share of only [0-10]% (P&G [0-10]%; Gillette [0-10]%).
63. In Greece the combined market share of the parties would [25-35]%. In addition, the increment over the share previously held by Gillette is minimal, below [...] ([0-5]%). Furthermore, the parties face competition from Unilever, a stronger competitor with a market share of [30-40]%.
64. In Hungary the combined market share of the parties would be [15-25]% (P&G [15-25]%; Gillette [0-10]%). The strongest competitors on this market are Unilever ([20-30]%) and Beiersdorf ([10-20]%).
65. In Lithuania the combined market share of the parties would be well below [15-25]% (P&G: [10-20]%; Gillette [0-10]%). The parties face competition from Colgate ([10-20]%), Unilever ([10-20]%) and Beiersdorf ([5-15]%).
66. In Slovenia the combined market share of the parties would be [15-25]% (P&G [10-20]%; Gillette [0-10]%). The parties face competition from a stronger competitor, Beiersdorf ([15-25]%), and other competitors as e.g. Unilever ([10-20]%).
67. It can be concluded from the above that, given the minimal/small overlaps on the markets for AP/Deos and the presence of stronger or at least equally strong competitors the concentration neither creates nor strengthens a dominant position on any of these markets and does not lead to a significant impediment of effective competition.

D. Shaving formulations

68. In the EEA the parties are active in the sector of Shaving Formulations under the brands “Noxzema” (P&G) and “Gillette” (Gillette).

¹⁴ Case IV/M.630 – Henkel/Schwarzkopf, paragraph 13 et seq.; see also case IV/M. 186 – Henkel/Nobel, paragraph 11 et seq.

1. Relevant product and geographic markets

69. Pre-shave preparations (shaving formulations) are used by consumers in conjunction with razors or blades, to achieve an optimal result in terms of hair removal. The Commission has previously considered shaving formulations as a separate product market within the broader body care sector¹⁵. The Commission did not further delineate the market by distinguishing between gels and foams or between male/female orientations.
70. The parties submit that despite some difference in functionality between gel and foams both are used by consumers interchangeably and both are sold to the same wholesaler/retailer under the same contracts. Furthermore, according to the parties there is a high degree of substitutability between pre-shave preparations specifically targeted at females and other pre-shave preparations. Finally the parties argue that supply-side considerations support the finding of an all-inclusive preparations market, regardless of form or male/female orientation.
71. However, the exact scope of the product market may be left open, as the operation does not lead to competition concerns under any alternative market definition.
72. In its previous decisions the Commission did not take a final view on the geographic market definition¹⁶. It acknowledged that (1) major competitors were active in almost all Member States, (2) production plants were supplying several Member States with transportation costs being low, (3) companies had started using brands on a European basis and (4) international buying organizations were founded. On the other hand the Commission emphasized that market shares and consumer preferences differed in the various Member States. Furthermore, there were significant retail price differences across Member States.
73. However, the exact scope of the geographic market may be left open, as the transaction does not raise competition problems if assessed at national level.

2. Competitive assessment

74. On the market for shave formulations (all market shares based on value, 2004) the operation would result in horizontally affected markets in Austria, Germany, Greece, Ireland, Italy, Portugal, United Kingdom and on an EEA-level.
75. On an EEA-level the combined market share of the parties would be [35-45]% (Gillette [35-45]%; P&G [0-5]%). The main competitors are Beiersdorf ([10-20]%) and Colgate ([5-15]%). The overlap on the EEA market is very small with less than [0-5]%. Therefore, the transaction does not have a significant impact on the current market structure in the EEA. Furthermore, well-known international competitors as e.g. Beiersdorf and Colgate are active on this market.

¹⁵ Case IV/M.630 – Henkel/Schwarzkopf, paragraph 12.

¹⁶ Case IV/M.630 – Henkel/Schwarzkopf, paragraph 13 et seq.; see also case IV/M. 186 – Henkel/Nobel, paragraph 11 et seq.

a) Greece

76. In Greece the transaction would lead to a combined market share of the parties of [35-45]% (Gillette [15-25]%; P&G [15-25]%). Although the combined market share of the parties is substantial, it has to be taken into account that the parties face competition from Beiersdorf, which has a significant market share of [20-30]%. Other well-known international competitors as Unilever ([0-10]%) and Colgate ([0-10]%) are also active on the market.
77. Furthermore, it should also be mentioned that the vast majority of Greek pre-shave preparation sales is done through supermarket chains (in 2003 according to Euromonitor: [75-85]% of total men's grooming products and [50-60]% of retail sales of cosmetics and toiletries) such as e.g. Carrefour Marinopoulos and AB Vlassilopoulos, which belongs to the Delhaize Group. As regards P&G and Gillette, the top 5 customers of P&G and Gillette respectively account for approximately [45-55]% of P&G's and Gillette's total pre-shave preparation sales in this country. The customers' relatively strong buyer power will prevent the parties from behaving independently on the market for pre-shave formulations also in the future.
78. Given the presence of strong and well-known international competitors and customers' buying power in the Greek market for shaving formulations, the transaction neither creates nor strengthens a dominant position on the markets for shaving formulations in Greece and does not lead to a significant impediment of effective competition.
79. As P&G is not active in pre-shave gels and female pre-shave formulations the competitive analysis would not change on the basis of a product market divided into gels and foams or on the basis of male and female orientation.

b) Italy

80. In Italy the transaction would lead to a combined market share of the parties of [35-45]% (Gillette [25-35]%; P&G [5-15]%). Although the combined market share of the parties is substantial, it has to be taken into account that the parties face competition from well-known international competitors as Colgate ([10-20]%), Henkel ([5-15]%) and Beiersdorf ([5-15]%).
81. Furthermore, approximately [65-75]% of the pre-shave formulations in Italy are sold through the grocery distribution channel. As regards P&G and Gillette, the top 5 customers of P&G and Gillette count for approximately [30-40]% of P&G's and Gillette's total pre-shave preparation sales respectively. The customers' relatively strong buyer power will prevent the parties from behaving independently on the market for pre-shave formulations also in the future.
82. Given the presence of international competitors and customers' buying power in the Italian market for shaving formulations, the transaction neither creates nor strengthens a dominant position on the markets for shaving formulations in Italy and does not lead to a significant impediment of effective competition.
83. As P&G is not active in pre-shave gels or female pre-shaving formulations, the competitive analysis would not change on the basis of a product market divided into gels and foams or on the basis of male and female orientation.

c) Other Member States

84. In Austria the combined market share of the parties would be [45-55]% (Gillette [45-55]%; P & G [0-5]%). The main competitors are Beiersdorf ([20-30]%) and Colgate ([5-15]%). As the transaction only leads to a minimal overlap of less than [0-5]% the transaction does not have a significant impact on the current market structure.
85. In Germany the combined market share of the parties would be [25-35]% (Gillette [20-30]%; P&G [0-5]%). The parties face strong competitors such as Beiersdorf ([20-30]%) and Colgate ([10-20]%). In addition, as the transaction only leads to a minimal overlap of less than [0-5]% the transaction does not have a significant impact on the current market structure.
86. In Ireland the combined market share of the parties would be [55-65]% (Gillette [55-65]%; P&G [0-5]%). As the overlap is minimal with less than [0-5]% the transaction does not have a significant impact on the current market structure.
87. In Portugal the combined market share of the parties would be [35-45]% (Gillette [35-45]%; P&G [0-5]%). As the overlap is minimal with approximately [0-5]% the transaction does not have a significant impact on the current market structure.
88. In the United Kingdom the combined market share of the parties would be [55-65]% (Gillette [55-65]%; P&G [0-5]%). As the overlap is minimal with less than [0-5]% the transaction does not have a significant impact on the current market structure.
89. Given the minimal/small overlaps on the markets for shaving formulations in Austria, Germany, Ireland, Portugal and the United Kingdom the concentration neither creates nor strengthens a dominant position on the markets for shaving formulations and does not lead to a significant impediment of effective competition.

E. Fragrances

90. In the EEA the parties' activities only overlap in the sector of fragrances sold in the mass channel and marketed to men, as Gillette is only active in this fragrances sector. The parties sell mass male fragrances under the brands "Old Spice" and "Irish Moos" (P&G) and "Gillette Aftershave Splash" and "Gillette Series" (Gillette).

1. Relevant product and geographic markets

91. Fragrances lend a specific smell and aroma to the body when applied to the skin. The notifying parties submit that fragrances should be segmented into a market for "mass" and a market for "prestige" or premium products. Furthermore, fragrances should be delineated into a market for male and female fragrances¹⁷.
92. However, the exact scope of the product market may be left open, as the operation does not lead to competition concerns under any alternative market definition. Gillette is only active in the mass male fragrances segment.

¹⁷ Case COMP/M.3149 – Procter & Gamble / Wella, paragraph 9, where the final market definition was left open; see also IV/M.630 - Henkel/Schwarzkopf, paragraph 12.

93. In its previous decisions the Commission did not take a final view on the geographic market definition¹⁸. It acknowledged that (1) major competitors were active in almost all Member States, (2) production plants were supplying several Member States with transportation costs being low, (3) companies had started using brands on a European basis and (4) international buying organizations were founded. On the other hand the Commission emphasized that market shares and consumer preferences differentiated in the various Member States. Furthermore, there were significant retail price differences across Member States.
94. However, the exact scope of the geographic market may be left open, as the transaction does not raise competition problems if assessed at national level.

2. Competitive assessment

95. On the market for mass male fragrances (all market shares based on value, 2004) the operation would result in horizontally affected markets in the Czech Republic, Finland, Hungary, Portugal and Norway. On an EEA-level the combined market share of the parties would be only [5-15]% (P&G [5-15]%; Gillette [0-10]%), the main competitors being Unilever ([10-20]%) and Coty ([10-20]%).
96. In the Czech Republic the combined market share of the parties would be only [15-25]% (P&G [5-15]%; Gillette [5-15]%). The parties will face competition from one stronger competitor, Unilever ([15-25]%), and Coty ([10-20]%). Therefore the transaction does not raise a competition concern on the Czech market for mass male fragrances.
97. In Finland the combined market share of the parties would be only [10-20]% (P&G [0-10]%; Gillette [5-15]%). The main competitor is Unilever ([20-30]%). Therefore the transaction does not raise a competition concern on the Finnish market for mass male fragrances.
98. In Hungary the combined market share of the parties would be [20-30]% (P&G [5-15]%; Gillette [10-20]%). The parties will face competition from Unilever ([15-25]%), Avon ([10-20]%) and Coty ([10-20]%) and other smaller competitors. Therefore the transaction does not raise a competition concern on the Hungarian market for mass male fragrances.
99. In Portugal the combined market share of the parties would be [15-25]% (P&G [15-25]%; Gillette [0-10]%). The parties will face competition from one stronger competitor, L'Oréal ([20-30]%), and Coty ([10-20]%). Therefore the transaction does not raise a competition concern on the Portuguese market for mass male fragrances.
100. In Norway the combined market share of the parties would be [25-35]% (P&G [10-20]%; Gillette [10-20]%). The parties will face competition from one stronger competitor, Coty ([25-35]%), and L'Oréal ([10-20]%). Therefore the transaction does not raise a competition concern on the Norwegian market for mass male fragrances.

¹⁸ Case IV/M.630 – Henkel/Schwarzkopf, paragraph 13 et seq.; see also case IV/M. 186 – Henkel/Nobel, paragraph 11 et seq.

101. Given the structure of the markets in the Czech Republic, Finland, Hungary, Portugal and Norway, the transaction neither creates nor strengthens a dominant position on the market for mass male fragrances and does not lead to a significant impediment of effective competition.

F. Small household appliances

102. As regards the sector of small household appliances in the EEA the parties' activities only overlap in the segments of hair dryers and hair stylers.

1. Relevant product and geographic markets

103. In a previous decision concerning the small household appliances sector the Commission identified a series of 13 product categories. Among those the Commission identified personal care appliances including health and beauty care appliances. This category consisted of several segments as e.g. hair dryers, epilators etc. As the concentration did not lead to affected markets under any alternative market definition, the Commission left open whether the health and beauty care appliances should be further subdivided according to the function of the appliances¹⁹.

104. The parties argue that hair care appliances sold to professionals should form part of another market than hair care appliances sold to end consumers²⁰. Professional hair care appliances are supposed to have a higher product quality (e.g. higher quality motors), higher prices and are distributed through own sales force and/or wholesalers to the salons.

105. In the present case, the exact scope of the product market may be left open as well, as the operation does not lead to competition concerns under any alternative market definition.

106. In its previous decision the Commission retained a national market definition but did not take a final view on the exact scope of the geographic market²¹. The parties argue that the existence of European-wide brands, the lack of regulatory barriers, the ease of contract manufacturing and the presence of major European players across most EEA States indicate that competition takes place at the EEA level.

107. However, the exact scope of the geographic market may be left open, as the transaction does not raise competition problems under any alternative geographic market definition.

2. Competitive assessment

108. Since Wella's products are only distributed through Salons whereas Gillette's products are sold to consumers via the traditional retail channels as domestic appliances, there would be no horizontal overlap in a hair care appliances market or any submarket

¹⁹ Case COMP/M.2621, SEB/Moulinex, paragraph 22.

²⁰ Case COMP/M.3149 Procter&Gamble/Wella, paragraph 12: indication for different market for hair care products according to distribution channel.

²¹ Case COMP/M.2621, SEB/Moulinex, paragraph 30.

thereof if the product market(s) were defined according to the distribution channel (salons – retail domestic appliances).

109. However, even on the basis of (a) product market(s) not delineated according to the distribution channel, competition concerns would not arise. Overlaps would only occur with regard to hair dryers, hair stylers and clippers/hair cutters (“hair care appliances”). Professional hair care appliances represent only a minor part of the total sales in hair care appliances. According to the parties’ estimates, the professional market of hair dryers represents only [0-5]% (in value) of the total market for hair care appliances. Figures available in number of units sold show that hair care appliances represent more than [...] units a year, of which only [...] units are professional hair appliances. At the level of the EEA, Gillette’s sales of hair care appliances represent a share well below 15 % (in value). Adding P&G’s sales of hair care appliances to professionals (salons) would lead to increments in market shares of less than [0-5] %. There is no indication that these increments in market shares would be higher on a national level. Therefore, the transaction would neither create nor strengthen a dominant position in the hypothesis of market(s) of hair care appliances due to the very small increment in market shares.

V. COMPETITIVE ASSESSMENT - POTENTIAL CONGLOMERATE EFFECTS

110. According to previous Commission’s decisions²², conglomerate effects might arise from the parties’ significant portfolio of brands and the fact that the parties have large market shares in numerous product markets where their activities do not overlap.

111. The parties own a significant number of so-called “must stock brands” (brands with a strong spontaneous demand that most retailers have on their shelves), such as for P&G e.g. Ariel, Pringles, Dreft, Olay, Tampax, Always, Pampers, Swifter, Fairy, Head & Shoulders, Pantene, Wella, Iams and Eukanuba, and for Gillette e.g. Oral B, Gillette razors and blades, Duracell, and Braun. After the merger, the parties would own 21 brands with a turnover of more than one billion dollars (P&G: 16; Gillette: 5).

112. In addition to their strong presence on the oral care markets, the parties have a strong position in several other product categories, in which the parties’ activities do not overlap. In particular, P&G is a leading supplier EEA-wide with a share of more than [20-30]% in several sub-categories of fabric and home care, baby care, feminine care, and hair care products, although facing competition from other big players such as Henkel and Unilever in fabric and home care, Johnson & Johnson in feminine care, L’Oreal in hair care, and a strong role of private labels in baby care. Gillette is by far the strongest player in the highly profitable segment of wet shaving products with only limited competition from Wilkinson and a very limited role of private labels. Gillette is also the leading supplier of portable power (batteries).

113. While the majority of the retailers replying to the Commission’s market investigation has not raised concerns with the merger, other retailers and competitors have raised concerns with regard to possible anti-competitive effects related to the parties’ increased “portfolio power” and their strong presence on a large number of markets. Indeed, the fact that many big retailers, notably in Germany or the United Kingdom, do not seem to

²² See e.g. COMP/M.938 - GUINNESS / GRAND METROPOLITAN.

be concerned with the effect of the merger on their business is not in itself sufficient to remove all competition concerns.

114. In an extensive market investigation, the Commission has therefore carefully investigated whether the merger could lead to anticompetitive conglomerate effects, taking into account i.a. the parties' rebate schemes and pricing policy, their share of must stock brands, their sourcing strategy, the effects of previous mergers or examples of delisting. The Commission's market investigation focused in particular on the possibility of foreclosure as a result of bundling of different products (1) or related to the position as category manager (2).

1. Foreclosure through bundling

115. The Commission has examined whether the merger would enable the parties to impose weak brands on their customers, to foreclose competitors from access to the retailers' limited shelf space or to hinder entry of new products to the market, using bundling practices.

116. The Commission investigated whether the parties might be able to oblige their customers to buy "weak" products together with a strong "must stock" product ("pure bundling") or if they grant better conditions for the joint purchase of bundled products ("mixed bundling"). In particular rebates (rebates across-the-board and incentive bonuses) and promotions have been mentioned by complainants as one possibility to enhance the parties' presence on the shelves.

117. Regarding in particular pure bundling, anticompetitive conglomerate effects are more likely to arise when the two merging parties offer goods which are highly complementary in demand²³. The broad range of products offered by the parties cannot be regarded in general as complementary in demand²⁴.

118. In terms of bundling rebates, the parties submitted data demonstrating that rebates²⁵ granted by them to smaller or larger retailers or even among same size retailers do not vary significantly within the same Member State. The market investigation has shown that P&G grants rebates predominantly based upon economies of scale, such as a mixed truck-load rebate schemes (a customer will benefit of the highest rebate only if it purchases from the most productive factory of the parties with the lowest cost of transport. As a consequence, it is not necessarily the customer with the highest purchases in volume or in value that will obtain the highest rebates, but the customer that will allow the parties to retrocede economies of scale.). The parties and some retailers reported that incentive bonuses to introduce new products are at present

²³ See e.g. COMP/M. 2220 - GE / Honeywell.

²⁴ Products or services are called "complementary" (or "economic complements") when they are worth more to a customer when used or consumed together than when used or consumed separately. Complementary products or services have correlated demand: if the price for one product falls, this increases demand not only for this product, but also for all products and services which are complementary to it. Conversely, a higher price for one product or service reduces the demand for both.

²⁵ Parties' submission on 17 June 2005, Annex 2 - Table.

relatively limited compared to the overall rebates granted²⁶. Since the parties have already a large portfolio today, this situation is not likely to change in the future. Moreover, the retailers have indicated that even in the case of increased margins for branded product they would not consider to stop selling private label products²⁷, with which they can even achieve higher margins than with branded products²⁸.

119. In terms of bundling promotions, the retailers confirmed that cross-promotions are mainly organized in the same product category (for example washing powder plus softener and usually on a 'buy one get another one' basis). Indeed, it does not make sense economically to combine promotions between the whole variety of many differentiated products offered by the parties (e.g. between feminine care and male wet shaving). As examples of such bundling are lacking and the existing portfolios of each of the parties is already very large, there is no indication that such bundling would become more likely in the future.

120. In the circumstances of the present case, it is unlikely that anticompetitive effects would result from bundling practices for the following reasons:

Competition between suppliers

121. There is significant competition of other branded product suppliers having a sufficiently broad product range²⁹. Even after the merger the retailers will roughly purchase the same percentage of their total purchases from the parties as from other major suppliers such as Henkel, Unilever etc. Therefore retailers are not dependant on one single company with a broad product portfolio.

Buyer power

122. The risk of portfolio effects resulting from the merger is mitigated considerably by the ability and incentive of retailers to exercise countervailing buyer power. Buyer power may, however, vary according to the size of the retailer. Two situations can be envisaged in this case depending on the concentration of the retail level in different Member States, i.e. buyer power of large size retailers and of small size retailers.

123. *Large retailers* can exert pressure on the parties as they can more credibly threaten to integrate private labels on their shelves or by sponsoring new entry through active in-store promotion. The present case has shown that private-label products suffer less from practices such as delisting than the parties' branded products³⁰.

²⁶ On average, they represent not more than about [...] % of the total rebates.

²⁷ Answers to second questionnaire to customers, question 16.

²⁸ Answers to second questionnaire to customers, question 11.

²⁹ First questionnaire to customers, question 27.

³⁰ Second questionnaire to customers, question Number 3. Third parties have indicated to the Commission that from the point of view of private labels' suppliers to retailers, private labels can be delisted and that this had already happened.

124. Since the retailers know the prices of the goods offered by the parties, they have the advantage to be in a position to fix the prices for their own private labels in reaction to the producers of branded products. In contrast, these producers are not able to readjust their prices to the retailers' private label prices. Therefore, the retailer has the capacity to counteract efficiently against the leading brands of the parties with its own private labels, whilst the parties have an asymmetry of information vis-à-vis prices for private labels.
125. Moreover, retailers perform an important “*gatekeeper*” function for suppliers since they serve as a “one-stop-shop” for the parties' products. If a retailer refused to carry a brand of the parties, the brand would risk disappearing from the customers' awareness. As a consequence, it would be detrimental to a leading brand of the parties to be excluded from a major retailer for a longer period, as it would entail significant losses in customer awareness, whilst the costs would be relatively minor for the retailer (whose sales with this brand represent only a small fraction of its turnover). It should also be noted that the parties' overall sales represent on average not more than 2% of the retailers' sales, while for the parties certain retailers represent 10% and more of the sales in a given country³¹.
126. Most retailers protect their bargaining position through a “*multiple sourcing*” strategy³². Such a strategy reduces the risk that the retailer becomes dependent on a particular supplier and allows for more cost-effective switching to other suppliers. Retailers indicated that they will never renounce to a multiple sourcing strategy and to the ownership of own private label products that compete with branded ones³³. Furthermore, retailers have indicated that even in the case of increasing margins for a branded product they would not consider stopping buying private label.³⁴ Also, they have largely confirmed that margins they achieve from private labels are higher than in case of branded products³⁵.
127. In general, delisting policy of retailers apply to underperforming brands of suppliers including the parties. In addition, the market investigation has shown that retailers *delisting* policy applied also to P&G's or Gillette must stock brands³⁶, although retailers reported that delisting these brands might entail a risk of losing customers and significant costs³⁷.

³¹ In this respect, the present case contrasts very starkly with the fragmented buyer side in other cases, e.g. COMP/M.928 - Guinness/Grand Metropolitan.

³² Answers to second questionnaire to customers, question 15.

³³ Answers to second questionnaire to customers, question 15.

³⁴ Answers to second questionnaire to customers, question 16.

³⁵ Answers to second questionnaire to customers, question 11.

³⁶ Answers to second questionnaire to customers question 3.

³⁷ See answers to questions 3 and 4 of the 2nd questionnaire to customers concerning portfolio power.

128. With respect to *small retailers*, it could be argued that the parties can exploit the small retailers' lack of countervailing buyer power to deter entry by competitors. However, it is unlikely that the parties could engage in exclusionary behaviour even with respect to smaller retailers.
129. This is because even in relatively unconcentrated markets with many small retailers, the intensive competition between retailers will render attempts to foreclose ineffective. If retailers face competition downstream (e.g. in their end customer business), acquiring a new brand offers a competitive advantage vis-à-vis other retailers, attracting more customers to the store and potentially increasing the retailer's market share and profits. Conversely, if retailers agreed not to list a product wanted by customers in order to obtain higher rebates, these retailers would risk losing customers to their competitors. As a result, the parties, in an attempt to exclude rival brands, would have to give a higher compensation to each retailer to induce them to accept the exclusive deal.
130. However, in the present case, the market investigation demonstrated that rebates³⁸ granted by the parties to smaller or larger retailers or even among same size retailers do not vary significantly. This means that there is no higher compensation from excluding rival brands after the merger (even though already before the merger the parties have independently a very large portfolio of brands).

Portfolio efficiencies

131. It has also to be taken into account that enlarging the product portfolio might bring efficiencies to retailers and customers, for example benefits from having only one partner to negotiate with ("one-stop-shop"), suppliers having stronger innovation capacities, and economies of scale and scope (e.g. offering a full truckload of the same product or even a full truckload of products from the same factory).
132. As a conclusion, the transaction is not likely to lead to foreclosure of competitors as a result of bundling non-complementary products. This conclusion is also corroborated by the Commission's market investigation, which confirmed that the previous merger of P&G and Wella has not resulted in any anticompetitive practices arising from the parties' enlarged portfolio³⁹.
133. The Commission has, however, also investigated whether the parties could use their complete range of products within the oral care category to foreclose competitors. In particular, the market investigation focused on whether the parties' involvement in category management practices could foreclose their competitors in the oral care business.

2. Foreclosure through category management

134. Category management is a management method used in modern retail business in order to optimise the retailers' product portfolio and to enable them to better meet the shoppers' demand. Category management is requested by retailers and offered by

³⁸ Parties' submission on 17 June 2005, Annex 2- Table.

³⁹ Answers to second questionnaire to customers, question 17.

leading suppliers as a free service to retailers. The category manager or “category captain” advises a retailer on certain issues relating e.g. to shelf space and placement of products.

135. Category management focuses on several main pillars, namely efficient assortment (e.g. what products or type of products should be stocked), efficient shelving (e.g. how to lay out the assortment on the shelves, number of brands and quantities of these brands). Sometimes it includes also recommendations on efficient pricing (how to price the assortment in accordance with the profile of the target shopper) efficient promotion (how and how frequently to promote the category of products).
136. In practice, the task of a category manager or “captain” is to provide retailers with information on product and shopper habits in relation to a specific category as defined by the retailer. A category captain will provide a detailed study called “plan-o-gram” on how to place and assort the products on the shelves. This will be done regularly upon request of the retailer (e.g. every year, every two years). It is up to the retailer to apply the management of the shelves in its stores. Some retailers use one category captain, other several suppliers as “key advisers”, others use independent consultants. The category captain does not intervene in the shelves to physically place its products or its competitors’ products. Generally, there is a review of the effects of the plan-o-gram by the retailer on margins and sales.

Possible concerns

137. Some third parties mentioned that a category manager could favour its own products, either without any knowledge of the retailer or with the agreement of the retailer (“tacit collusion”).
138. This management policy could enable the “category captain” to better place its products on the shelves thereby increasing its overall output in one category to the detriment of its competitors. This would, however, only be possible, if retailers did not exert effective control over the category captain’s recommendations. The category management position might as well lead to a reduction of brands and therefore of customer choice which could ultimately result in long term rising prices.
139. Another potential concern with category management for the Commission was that in some cases large retailers with strong private-label presence may share an interest with the parties in excluding other manufacturers of branded goods. Such exclusionary practices require a credible commitment by the retailer not to carry other suppliers’ products.
140. In the present case the transaction could allow the parties to increase their involvement as category managers in the oral care sector. While up to now both parties do not offer the full range of oral care products, e.g. Gillette being weak in toothpaste and P&G in toothbrushes, after the transaction the combination of the parties’ product portfolios will make them more eligible as category managers in the oral care sector.

Market investigation

141. The Commission tested in its enquiry the impact of existing category management by the parties vis-à-vis competitors’ overall sales and prices. It compared market

shares/sales evolution of P&G, Gillette and their competitors when the parties were category captains and when they were not. Furthermore, the Commission examined the evolution of prices in product categories as well as the evolution of the number of competitors and brands on the shelves and whether delisting of competitors' brands happened when the parties were category captains. The Commission considered as well possible "mitigating" circumstances such as effective implementation of a plan-o-gram or losses for the parties of a category management position in the past.

142. According to the answers to the enquiry, there is no doubt that the main beneficiaries of category management are leading brands as well as private labels, and that the relative losers are the remaining competitors (i.e. those supplying non-leading brands). This is especially true at the level of so-called "recommendations"⁴⁰. It is also true after implementation of the plan-o-gram⁴¹, though private labels benefit more than leading brands. Indeed the market investigation has shown that the retailers were capable to favour their own private label products even more than as agreed within the "recommendations" while reducing the benefits expected by the leading brands.
143. As concerns the possibility that category managers could provide "biased" recommendations to retailers, the market investigation has shown that there is no significant information asymmetry between retailers and suppliers which could be abused. While ten or fifteen years ago retailers did not have sufficient data to verify the category manager's proposal, most retailers have very sophisticated sales and customer data nowadays; in addition, while only suppliers used to have the relevant Nielsen / GfK consumer data in the past, most retailers receive Nielsen/GfK data in exchange for providing their own sales figures to GfK/Nielsen. Therefore the retailer will normally carefully check the proposal from the category manager, based on his own data. In addition, the retailer is the one responsible for placing products on the shelves not the supplier.
144. As regards the possibility of a category manager favouring its products with the agreement of the retailer, the market investigation indicates that retailers often deviate from the recommendation of their category manager. Furthermore, exclusivity contracts are not prevalent in the product categories affected by the merger where multi-sourcing is the norm and only underperforming brands get delisted.
145. Indeed, most of the parties' competitors and some of the retailers, through their private labels, provide a full range of oral care products, sometimes similar or even broader than the parties' range, which prevents the parties from forcing retailers to buy a full line of their own branded products. The Commission's enquiry has demonstrated that most of the retailers are willing in the future to maintain alongside the leading brand at least one competitor and one private label brand. It should be mentioned, that the retailers have done this while reacting for example to the merger between P&G and Wella in the hair care sector where market shares of the parties were superior to what they will be in the oral care sector. The market investigation has confirmed that retailers have defended

⁴⁰ "Recommendations" are the result of an agreement between supplier and the retailer upon the plan-o-gram before its implementation; the parties supplied data for these recommendations.

⁴¹ It should be noted that the recommendations are in most cases only partly implemented.

their private label market shares against parties' recommendations in favour of their own brands.

146. Moreover, being a category manager does not prevent his own (in this instance the parties') products from being delisted. Customers confirmed that P&G and Gillette must stock brands have in some cases been delisted at the time when these two undertakings were category captains. Furthermore, sometimes products of competitors were delisted but only as they were underperforming.
147. Sometimes retailers mentioned that prices increased but never when there was an increase of the parties' sales. Therefore, it is likely that this is due to other external trends (new products more innovative and more expensive, inflation etc.).
148. The assumption that the parties would be more often eligible as category manager was only supported by a part of the customers. Even if the merged entity was more eligible as category captain in the future, nothing indicates that the parties would have a more important role in category management than its competitors, especially taking into account that their current position in category management is relatively modest given their products' market shares in the oral care markets". As a result of the transaction any enlarged role of the parties in category management could increase competition vis-à-vis competitors.
149. Moreover, the market investigation related to category management has shown that category management does not lead to the elimination of competitors.
150. In addition category management is likely to generate efficiencies for retailers and consumers. The market investigation has shown that the overall sales of a category increased as an effect of category management (e.g. by allowing retailers to better compare best practices in the retail sector, better placement of products which meet better the shoppers' demand). In addition, category management tends to reduce listing fees⁴², which are favourable to larger suppliers. Indeed, category management represents a management policy according to which shelf allocation decisions end-consumers' demand and not, as in the past, the willingness of a supplier to pay listing fees⁴³. As category management is based on shoppers' habits it leads as well to higher customer satisfaction as it meets better demand expectation. Furthermore, category management allows retailers to achieve economies of scale as it reduces stocks and ensures that the optimal quantity of products is presented timely and directly on the shelves. Finally, category management enables suppliers to achieve economies of scale through more efficient promotion as the suppliers are able to better anticipate the demand and to tailor their promotion.
151. In conclusion, category management policy appears to provide an advantage to leading brands in general, and not only to the parties. This may be seen as largely pro-competitive, as it makes it easier for retailers to stock the most-demanded brands and

⁴² Answers to first questionnaire to customers, question 18.

⁴³ [Footnote explaining listing fees.]

easier for consumers to find them in sufficient quantities on the shelves. Hence, there is no elimination of competition.

VI. COMMITMENTS SUBMITTED BY THE PARTIES

1. Description of the commitments

152. In order to render the concentration compatible with the common market, the parties have entered into the following commitments, which are annexed to this decision and form an integral part thereof. A first commitment package was proposed by the parties on 24 June 2005. After being informed by the Commission that the commitments offered were not sufficient to remove all competitive concerns raised by the operation, the parties offered modified commitment package on 13 July 2005 which improved the original commitments in order to ensure that the commitment package as a whole is workable and effective.

153. The parties commit

(1) to divest its battery toothbrush business marketed under the trademark “SpinBrush” at least in the territory of the EEA.

(2) to grant a two year exclusive licence for the co-brands used on the SpinBrush battery toothbrushes (“Crest”, “Blend-a-dent”, “Blend-a-Med”, “Blendi” and “AZ”) for the whole of the EEA. P&G also commits not to re-introduce the licensed brand in the countries for which the license has been granted within a period of at least four years after the termination of the license agreements (“blackout period”). Should the licensee decide not to use the licence for the full period of two years, the blackout period will be extended accordingly to allow for a total protection period of six years.

(3) to accept a First Divestiture period of [...]

2. Suitability to remove the competition concerns

154. P&G is only active in the battery/powered toothbrushes markets with its “Spinbrush” battery toothbrush. The commitment will therefore *entirely remove the existing overlaps* between the parties in hypothetical markets for power toothbrushes and for battery toothbrushes in the affected Member States.

155. The results of the market test of the remedies package suggest, however, that the timely implementation of the proposed commitment is of utmost importance for the viability of the divested business. [...] will ensure that problems arising from a delayed divestiture will be avoided.

156. In their first commitments proposal, the parties have offered to grant a licence for the co-brands used on “SpinBrush” toothbrushes only for those countries in which they are currently marketed by P & G. The market test of the commitments has, however, shown that the licences offered by the parties should cover the whole territory of the EEA, and

not only single Member States in order to be regarded as a viable business⁴⁴. Indeed, allowing the parties to become active in countries in which they were not active before might put the viability of the very limited divested business into question. Also, it would prevent the acquirer from expanding the business to other Member States, which the Commission was told can be a condition for the economic success of the acquisition (e.g. with a view to the necessary investments for the re-branding of the product). Furthermore, a licence limited to some single Member States could confuse consumers as to identity of the holder of the brand.

3. Conclusion on the commitments

157. The proposed commitments can therefore be regarded as suitable to remedy the identified competition concerns.

VII. CONCLUSION

158. For the above reasons the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement, subject to the condition of full compliance with the commitments as described in paragraph 150 and the related text in the Commitments annexed to this decision and to the obligation of full compliance with the other sections of the said Commitments. This decision is adopted in application of Article 6(1)(b) in connection with Article 6(2) of Council Regulation (EC) No 139/2004 and Article 57 of the EEA Agreement.

For the Commission
(signed)
Neelie KROES
Member of the Commission

⁴⁴ See Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98, OJ C 68/2001, 3, paragraph 17.

Case No. COMP/M.3732 P&G/Gillette

**PROPOSED CONCENTRATION BETWEEN
THE PROCTER & GAMBLE COMPANY
AND
THE GILLETTE COMPANY**

CASE COMP/M.3732 P&G/Gillette

**COMMITMENTS OFFERED BY
THE PROCTER & GAMBLE COMPANY
TO THE COMMISSION OF THE EUROPEAN
COMMUNITIES
IN RESPECT OF 'POWER TOOTHBRUSHES'**

13 July 2005



**CASE COMP M. 3732
PROPOSED CONCENTRATION BETWEEN**

**THE PROCTER & GAMBLE COMPANY
AND
THE GILLETTE COMPANY**

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the "**Merger Regulation**"), The Procter & Gamble Company hereby provides the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the acquisition of sole control of The Gillette Company by The Procter & Gamble Company (the "**Proposed Concentration**"), jointly referred to herein as the "**Parties**") compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation, (the "**Decision**").

The proposed commitments are fully and automatically withdrawn and void if the Commission does not issue a decision according to Article 6 (1) (b) but a decision according to Article 6 (1) (c) of the Merger Regulation, or if the Proposed Concentration does not close.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) N° 4064/89 and under Commission Regulation (EC) N° 802/2004.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Decision Date: the date of the adoption of the Decision.

Divestment Business: the business or businesses as defined in Section B and the Schedule that the Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by The Procter & Gamble Company and who has received from The Procter & Gamble Company the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of the termination of the waiting period applicable to the Proposed Concentration under the Hart Scott Rodino Act.

First Divestiture Period: the period of [...] from the Effective Date.

Hold Separate Manager: the person appointed by The Procter & Gamble Company for the Divestment Business to manage the day-to-day business in the EEA under the supervision of the Monitoring Trustee.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by The Procter & Gamble Company, and who has the duty to monitor The Procter & Gamble Company's compliance with the conditions and obligations attached to the Decision.

Purchaser: the entity or entities approved by the Commission as acquirer(s) of the Divestment Business in accordance with the criteria set out in Section D.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

P&G: The Procter & Gamble Company incorporated under the laws of the State of Ohio (USA), with its registered office at 1 Procter & Gamble Plaza, Cincinnati Ohio 45202 and registered in the Ohio Company Register under number 20677.

Section B. The Divestment Business

Commitment to divest

- (1) In order to restore effective competition, P&G commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser(s) and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 17. To carry out the divestiture, P&G commits to find a purchaser(s) and to enter into a binding agreement for the sale and purchase of the Divestment Business within the First Divestiture Period. Although P&G commits to divest the Divestment Business should a purchaser wish to buy only a geographical portion of the Divestment Business, P&G commits to sell at least the EEA portion of the Divestment Business. If P&G has not entered into such an agreement at the end of the First Divestiture Period, P&G shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 27 in the Trustee Divestiture Period ("**Trustee Mandate**"). In that case, P&G reserves the right to limit the Trustee Mandate to the sale of the EEA portion of the Divestment Business.
- (2) P&G shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, P&G has entered into a binding agreement for the sale and purchase of the Divestment Business, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 17 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the Purchaser and the terms of sale by the Commission.
- (3) In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Decision Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

- (4) The Divestment Business is the battery toothbrush (as opposed to manual and rechargeable toothbrushes) business of P&G as marketed on the Decision Date under the common trademark 'SpinBrush' ("**Trademark**") and sold in countries throughout the world under the Trademark alone or in combination with other trademarks. In addition, the Divestment Business shall include certain upgrades of existing battery toothbrushes which, on the Decision Date, are planned to be marketed after the Decision Date. Within the EEA the secondary trademarks are 'Crest' (as currently used together with SpinBrush in the UK, France, Spain, Greece, Ireland); 'Blend-a-Dent' and 'Blendi' (as currently used together with SpinBrush in Austria, Germany); 'Blend-a-Med' (as currently used together with SpinBrush in Latvia, Lithuania,

Estonia, Poland) 'AZ' (as currently used together with SpinBrush in Italy) (hereinafter collectively referred to as "**Secondary Trademarks**"). The Divestment Business is operated in one of P&G's Global Business Units: 'Global Health, Baby and Family Care'. The Divestment Business, defined in detail in the Schedule, includes:

- (a) all tangible and intangible assets (including intellectual property rights), which are used in the Divestment Business and are necessary to ensure the viability and competitiveness of the Divestment Business;
- (b) to the extent required and assignable, all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business; and
- (c) all purchase orders, contracts, agreements and other obligations exclusively related to the Divestment Business and freely assignable; copies of all customer, credit and other records of the Divestment Business as currently marketed (items referred to under (a)-(c) hereinafter collectively referred to as "**Asset**").

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

- (5) From the Decision Date until Closing, P&G shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular P&G undertakes:
 - a. not to carry out any act upon its own authority that might have a material adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business; and
 - b. to make available sufficient resources for the development of the Divestment Business.

Hold-separate obligations of Parties

- (6) Without prejudice to paragraph 5 above, P&G commits, from the Decision Date until Closing, to keep the Divestment Business as it operates in the EEA separate from the businesses it is retaining in the EEA and to ensure that the Hold Separate Manager has no involvement in any business retained in the EEA and vice versa.

- (7) Without prejudice to paragraph 5 above, Until Closing, P&G shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed in the EEA as a distinct and saleable entity separate from the businesses retained by the Parties in the EEA. P&G shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business in the EEA, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

Ring-fencing

- (8) P&G shall implement all necessary measures to ensure that it does not after the Decision Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business in the EEA. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. P&G may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to P&G is required by law.

Licence Period

- (9) In order to allow the Purchaser to immediately manage the business as a going concern, a licence in relation to the Divestment Business will be made available for the Secondary Trademarks identified in the Schedule for a period of 2 years from Closing within which the licensee will stop using the said Secondary Trademarks ("**Licence Period**").

Scope of Licence

- (10) Trade marks are exclusively licensed for or assigned exclusively for the battery toothbrushes that P&G markets on the Decision Date.

Assignment Territory

- (11) The assignment territory ("Assignment Territory") is at least EEA wide.

Licence Territory

- (12) The licence territory ("Licence Territory") is EEA wide.

Black-out

- (13) P&G undertakes for a period of 4 years after the Licence Period not to brand any battery or rechargeable toothbrushes with the Secondary Trademarks in the respective Licence Territory (Black-out Period). Should the licensee decide to re-brand the Divestment Business before the expiry of the Licence Period, the Black-out Period shall be extended accordingly to allow for a maximum protection period of six years from the start of the Licence Period.

Due Diligence

- (14) In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, P&G shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process provide to potential purchasers sufficient information as regards the Divestment Business.

Reporting

- (15) P&G shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Decision Date (or otherwise at the Commission's request).
- (16) P&G shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

- (17) In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
- (a) be independent of and unconnected to the Parties;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors in the EEA;
 - (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must,

in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the Purchaser hereafter the “**Purchaser Requirements**”).

- (18) The binding sale and purchase agreement shall be conditional on the Commission’s approval of the Purchaser of the EEA portion of the Divestment Business. When P&G has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the agreement(s), to the Commission and the Monitoring Trustee. P&G must be able to demonstrate to the Commission that the Purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

- (19) P&G shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If P&G has not entered into a binding agreement for the sales and purchase of the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by P&G at that time or thereafter, P&G shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestment Period.
- (20) The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by P&G

- (21) No later than one week after the Decision Date, P&G shall submit a list of one or more persons whom P&G proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, P&G shall submit a list of one or more persons whom P&G proposes to appoint as Divestiture Trustee to the Commission for

approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 20 and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

- (22) The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, P&G shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, P&G shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by P&G

- (23) If all the proposed Trustees are rejected, P&G shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 19 and 22.

Trustee nominated by the Commission

- (24) If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom P&G shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

- (25) The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or P&G, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

(26) The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by P&G with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and, the keeping separate of the Divestment Business from the business retained by P&G, in accordance with paragraphs 5 and 6 of the Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;

(c) (i) in consultation with P&G, determine all necessary measures to ensure that P&G does not after the Decision Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business in the EEA, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to P&G as the disclosure is reasonably necessary to allow P&G to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets between the Divestment Business and P&G or Affiliated Undertakings. In the event of a disagreement between the Purchaser and P&G, the Monitoring Trustee will propose solutions and, in the event of continued disagreement, will refer the matter to the Commission.

(iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;

(iv) propose to P&G such measures as the Monitoring Trustee considers necessary to ensure P&G's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process,

and (b) potential purchasers are granted reasonable access to the P&G personnel currently involved in the Divestment Business.

(vi) provide to the Commission, sending P&G a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending P&G a non-confidential copy at the same time, if it concludes on reasonable grounds that P&G is failing to comply with these Commitments;

(vii) within one week after receipt of the documented proposal referred to in paragraph 18, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

- (27) Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 17. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of P&G, subject to P&G's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- (28) In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to P&G.

III. Duties and obligations of P&G

- (29) P&G shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of P&G's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information

necessary for fulfilling its duties under the Commitments and P&G and the Divestment Business shall provide the Trustee upon request with copies of any document. P&G and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

- (30) P&G shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. P&G shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. P&G shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
- (31) P&G shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, P&G shall cause the documents required for effecting the sale and the Closing to be duly executed.
- (32) P&G shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to P&G for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
- (33) At the expense of P&G, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to P&G's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should P&G refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard P&G. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 35 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served P&G during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

- (34) If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require P&G to replace the Trustee; or
 - (b) P&G, with the prior approval of the Commission, may replace the Trustee.
- (35) If the Trustee is removed according to paragraph 34, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 19-24.
- (36) Beside the removal according to paragraph 34, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

- (37) The Commission may, where appropriate, in response to a request from P&G showing good cause (for example, if appropriate, as a result of the position of another anti-trust authority) and, if appropriate, accompanied by a report from the Monitoring Trustee, waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. The provisions of this paragraph do not apply to requests for an extension of the time periods foreseen in the Commitments.
- (38) The Commission may, where appropriate, in response to a request from P&G and, if appropriate, accompanied by a report from the Monitoring Trustee, grant an extension of the time periods foreseen in the Commitments. [...]

Sharon E Abrams General Counsel Western Europe

Duly authorised for and on behalf of The Procter & Gamble Company.

SCHEDULE

(1) The Divestment Business is the battery toothbrush (as opposed to manual and rechargeable toothbrushes) business of P&G as marketed on the Decision Date under the common trademark 'SpinBrush' (Trademark) and sold in countries throughout the world under the Trademark alone or in combination with other trademarks. In addition, the Divestment Business shall include the following upgrades of existing battery toothbrushes (including a licence to necessary IP rights, if any) which, on the Decision Date, are planned to be marketed after the Decision Date, [...].

(2) Within the EEA the Secondary Trademarks are 'Crest' (currently used together with SpinBrush in the UK, France, Spain, Greece, Ireland); 'Blend-a-Dent' and 'Blendi' (currently used together with SpinBrush in Austria, Germany); 'Blend-a-Med' (currently used together with SpinBrush in Latvia, Lithuania, Estonia, Poland) 'AZ' (currently used together with SpinBrush in Italy). The Divestment Business is operated in one of P&G's Global Business Units: 'Global health, baby and family care'.

(3) Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:

a) All tangible assets exclusively related to the Divestment Business, including the following:

- the warehoused stock, finished products, raw and pack materials, outstanding product orders from suppliers and in-store advertising materials;
- production moulds (subject to licensors authorisation for those products using cartoon characters licensed to P&G by third parties)
- artworks cylinders.

b) The following intangible assets used in the Divestment Business in the EEA:

- trade marks: (i) assignment of the Trademark; (ii) two-year licence, exclusive to the Purchaser, for a price and other terms to be agreed by P&G or the Trustee, as appropriate, with the Purchaser to use the Secondary Trademarks in the territory identified in paragraph 12 of these Commitments, in relation to the Divestment Business; (iii) with respect to trademark applications and registrations which contain a combination of the Trademark and any other trademark, P&G would consent to the Purchaser's applications for the Trademark and, upon the request of the Purchaser, P&G would also cancel its registrations or withdraw its applications for marks containing a combination of both the Trademark and the other trademark;

- patents: licence for the patents currently used in the Divestment Business (as listed in Annex 1) for use exclusively in the Divestment Business;
- other intellectual property rights: licence for all other intellectual property rights, including know-how, design rights relating to the packaging, the advertising of the products, the use of cartoon characters in connection the production and sale of children's variants of the Divestment Business to the extent such use can be assigned or sub-licensed (as listed in Annex 2).

c) Licences, permits and authorisations, if any (there are no such licenses, permits and authorisations in the EEA), to the extent that this is not hindered by change of control clauses or other relevant restrictions on assignment;

d) All purchase orders, contracts, agreements and other obligations exclusively related to the Divestment Business and freely assignable (to be listed in Annex 3) by P&G without the consent of any third party or where such consent has been obtained prior to Closing. (P&G will use all reasonable efforts to obtain the consent of any third party to any purchase order, contract, agreement or other obligation exclusively used in the Divestment Business, which consent is required for the assignment of any such purchase order, contract, agreement or other obligation from P&G to the purchaser);

e) Copies of all the books, records and other documents exclusively related to or necessary for the operation of the Divestment Business (including, without limitation, customer and supplier lists and files, distribution lists, mailing lists, sales materials, operating, production and other manuals, plans, files, specifications, process drawings, computer programs, data and information, manufacturing and quality control records and procedures, market research and intelligence, advertising and promotional materials), provided that P&G may redact from such copies any information that does not relate to the Divestment Business, and

f) Goodwill exclusively related to the Divestment Business.

If there is any asset which would not be covered in the above list but which is both used exclusively in the Divestment Business and necessary for the continued viability of the Divestment Business, then that asset or adequate substitute will be offered to potential purchasers. If there is any asset which would not be covered in the above list but which is both used (but not exclusively) in the Divestment Business and necessary for the continued viability of the Divestment Business (a "Shared Asset"), then P&G and the potential purchaser will negotiate with respect to how to provide the potential purchaser with access to such Shared Asset or adequate substitute. If P&G and the potential purchaser are unable to agree, the issue will be submitted to the Monitoring Trustee.

(4) The Divestment Business shall not include:

(a) License on future patents and IP rights to be filed by P&G after the Decision Date;

(b) License on patents and IP rights not necessary for use in the Divestment Business as marketed or planned to be marketed at the Decision Date;

(c) Trademark licences for territories other than the territory identified in paragraph 12.

Annex 1

[...]

Annex 2

[...]

Annex 3

[...]