

REFERENCE RELATING TO THE ANTICIPATED ACQUISITION BY RECKITT BENCKISER OF THE K-Y BRAND FROM JOHNSON & JOHNSON

Notice of acceptance of interim undertakings pursuant to section 80 of the Enterprise Act 2002

On 10 March 2014, Reckitt Benckiser Group plc (RB) and Reckitt Benckiser Brands Limited, (the acquirers), entered into an asset purchase agreement with McNeil-PPC, Inc., (McNeil), a subsidiary of Johnson & Johnson (J&J), and their affiliates, (the vendors), pursuant to which the acquirers agreed to purchase, and the vendors to sell the rights, liabilities and assets relating to the K-Y business globally (the K-Y business).

On 7 January 2015, the Competition and Markets Authority (CMA), pursuant to section 33(1) of the Enterprise Act (the Act), referred the anticipated acquisition of the K-Y business in the United Kingdom (UK), (the UK K-Y business), by the acquirers from the vendors for further investigation and report by a group of CMA panel members (the inquiry group).

The CMA wishes to ensure that no action is taken pending final determination of the reference which might prejudice the reference or impede the taking of action by the CMA which might be justified by the CMA's decisions on the reference. The reference has not been finally determined in accordance with section 79(1) of the Act.

Now, pursuant to section 80(2) for the purpose of preventing pre-emptive action, the CMA accepts the interim undertakings from J&J, McNeil and their respective subsidiaries, set out in APPENDIX 1 below (the Undertakings) and accordingly the Undertakings come into force pursuant to section 80(5) of the Act with immediate effect.

Signed by authority of the CMA

PHIL EVANS
Group Chair
17 June 2015

PROPOSED ACQUISITION OF THE K-Y BRAND

BY RECKITT BENCKISER

Undertakings given to the Competition and Markets Authority by Johnson and Johnson pursuant to section 80 of the Enterprise Act 2002

Whereas:

- (a) on 10 March 2014 Reckitt Benckiser Group plc (RB) and Reckitt Benckiser Brands Limited, (the acquirers), entered into an asset purchase agreement with McNeil-PPC, Inc., (McNeil), a subsidiary of Johnson & Johnson (J&J), and their affiliates, (the vendors), pursuant to which the acquirers agreed to purchase, and the vendors to sell the rights, liabilities and assets relating to the K-Y business globally (the K-Y business).
- (b) on 7 January 2015, the Competition and Markets Authority (CMA), pursuant to section 33 (1) of the Enterprise Act (the Act), referred the anticipated acquisition of the K-Y business in the United Kingdom (UK), (the UK K-Y business), by the acquirers from the vendors for further investigation and report by a group of CMA panel members (the inquiry group);
- (c) on 22 May 2015, the CMA published its provisional findings provisionally finding, *inter alia*, that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation and the creation of that situation may be expected to result in a substantial lessening of competition (SLC) in the supply of personal lubricants to grocery retailers and national pharmacy chains in the UK; and
- (d) the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 80 of the Act, J&J, McNeil and their respective subsidiaries, (the vendors), give to the CMA the following Undertakings:

Commencement, application and scope

1. The Undertakings shall come into force on the commencement date in accordance with section 82(2) of the Act.
2. The Undertakings are given by J&J, McNeil and their respective subsidiaries.
3. Notwithstanding any other provision of these Undertakings, no act or omission shall constitute a breach of these Undertakings, and nothing in these Undertakings shall oblige J&J, McNeil and their respective subsidiaries to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the UK K-Y business until determination of the proceedings

4. Except with the prior written consent of the CMA, J&J, McNeil and their respective subsidiaries undertake that they will not during the specified period take any action which might prejudice the reference or impede the taking of any action under the Act by the CMA, which may be justified by the CMA's decisions on the reference, including any action (inclusive of the exercise of contractual rights and/or obligations/exercise of intellectual property rights) which:
 - (a) completes the transaction, or causes or permits any other integration of the UK K-Y business with the RB business;
 - (b) closes, winds down the UK K-Y business, or otherwise terminates/refuses the supply of K-Y branded personal lubricants to any customers in the UK outside the ordinary course of business or reduces the volumes sold or supplied outside normal fluctuations in the ordinary course of business;
 - (c) sells or otherwise transfers ownership or control of the UK K-Y business to any entity that is not under their direct or indirect control;
 - (d) impairs the carrying on of the UK K-Y business and the ability of the UK K-Y business and the RB business to compete independently in any of the markets affected by the transaction; and
 - (e) frustrates compliance with these Undertakings and the acquirers' compliance with their Undertakings.

Compliance

5. J&J and McNeil shall procure that each of their subsidiaries complies with these Undertakings as if they had been given by them.
6. J&J and McNeil will confirm to the CMA, on the last working day of each month and in the form set out in the Appendix, compliance with these Undertakings.
7. Notwithstanding paragraph 5 above, J&J and McNeil shall actively keep the CMA informed of any material developments relating to the UK K-Y business, which includes but is not limited to promptly notifying the CMA within five working days of:
 - (a) any refusal to supply customers in the UK outside the ordinary course of business;
 - (b) any appreciable reduction (outside normal fluctuations in the ordinary course of business) of the volumes that are either sold or supplied to customers in the UK; and
 - (c) any substantial changes in the UK K-Y business's contractual arrangements or relationships with key suppliers.
8. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, these Undertakings, or do or refrain from doing any specified action in order to ensure compliance with these Undertakings. The CMA may vary or revoke any directions so given.
9. If J&J and McNeil have any reason to suspect that these Undertakings might have been breached they shall immediately notify the CMA.
10. J&J and McNeil will comply with such written directions as the CMA may give from time to time for the purpose of carrying out or securing compliance with these Undertakings.

Interpretation

11. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
12. For the purposes of this Order:
'the Act' means the Enterprise Act 2002;

‘an affiliate’ of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

‘business’ has the meaning given by section 129(1) and (3) of the Act;

‘commencement date’ means the date on which these Undertakings are accepted by the CMA;

‘control’ includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

‘Johnson & Johnson’ (J&J) is a US-based multinational group with more than 250 companies located in 60 countries which supplies healthcare products worldwide. J&J’s subsidiary, McNeil-PPC, Inc., is the direct vendor of the business of the supply of personal lubricants under the K-Y brand globally. The group is organized into three business segments, one of which is the Consumer Healthcare;

‘McNeil-PPC, Inc.’ is the vendor of the business of the supply of personal lubricants under the K-Y brand (inclusive of the UK K-Y business) and a subsidiary of J&J. McNeil belongs to the Consumer Healthcare division of J&J. McNeil and its affiliates manufacture (partly through third parties) and sell personal lubricants under the K-Y brand;

‘Reckitt Benckiser Group plc (RB)’ is a global consumer goods company, with operations in 66 countries and 101 brands, including the Durex brand of personal lubricants. It is the ultimate owner of all assets belonging to Reckitt Benckiser and the prospective acquirer of the UK K-Y business;

‘Reckitt Benckiser Brands Limited’ holds the intellectual property rights for the Durex Brand and is the direct prospective acquirer of the UK K-Y business;

‘subsidiary’, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

‘The UK K-Y business’, means the business of supplying by McNeil-PPC, Inc. and its subsidiaries of personal lubricants in the UK under the K-Y brand and the related rights, liabilities and assets that are subject to the Asset Purchase Agreement of 10 March 2014 and the Asset Purchase Agreement

of 24 April 2014 for Certain Rest of World Territories by and among McNeil-PPC, Inc. and Reckitt Benckiser Brands Limited and ancillary agreements executed in connection therewith;

'The RB business' means the business of supplying personal lubricants by RB and its subsidiaries as at the commencement date;

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 36 of the Act;

'the ordinary course of business' means matters connected to the day-to-day supply of personal lubricant products by the UK K-Y business or the RB business and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of the UK K-Y business and the RB business;

'specified period' means the period beginning on the date of these Undertakings and terminating at the end of the period specified in section 80(7) or (8) of the Act;

'the transaction' means the transaction by which RB and the UK K-Y business will cease to be distinct within the meaning of section 23 of the Act;

'the respective businesses' means the UK K-Y business and the RB business; and

unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF J&J, MCNEIL AND THEIR SUBSIDIARIES

Pat Smallcombe
Area Managing Director, Northern Europe

Compliance statement for J&J, McNeil and their subsidiaries

I [insert name] confirm on behalf of J&J, McNeil and their respective subsidiaries that in the period from [insert date] to [insert date] (the Relevant Period):

1. J&J, McNeil and their subsidiaries have complied with these Undertakings given by J&J and McNeil and accepted by the CMA on [date];
2. Subject to paragraph 4 of these Undertakings, and except with the prior written consent of the CMA during the specified period no action (inclusive of the exercise of contractual rights/ obligations and/or the exercise of intellectual property rights) has been taken by J&J, McNeil and their subsidiaries, which might prejudice the reference or impede the taking of any action under the Act by the CMA that may be justified by the CMA's decisions on the reference. More specifically, neither J&J, McNeil nor any of their subsidiaries have:
 - (a) taken any action to complete the transaction or to cause or permit any other integration of the UK K-Y business with the RB business;
 - (b) closed, wound down the UK K-Y business or otherwise terminated/refused the supply of K-Y branded lubricants to any customers in the UK outside the ordinary course of business or reduced the volumes sold or supplied outside normal fluctuations in the ordinary course of business;
 - (c) sold or otherwise transferred ownership or control of the UK K-Y business to any entity that is not under their direct or indirect control;
 - (d) impaired the carrying on of the UK K-Y business and the ability of the UK K-Y business and the RB business to compete independently in any of the markets affected by the transaction; and
 - (e) frustrated compliance with these Undertakings and the acquirers' compliance with their Undertakings.
3. J&J, McNeil and their respective subsidiaries remain in full compliance with these Undertakings and will continue actively to keep the CMA informed of any material developments relating to the UK K-Y business in accordance with paragraph 7 of these Undertakings.

Interpretation

4. Terms defined in the Undertakings have the same meaning in this compliance statement.

FOR AND ON BEHALF OF J&J, MCNEIL AND THEIR SUBSIDIARIES

Signature

Name

Title

Date