

ANTICIPATED ACQUISITION BY RECKITT BENCKISER GROUP PLC OF THE K-Y BRAND IN THE UK

Undertakings given to the Competition and Markets Authority by Reckitt Benckiser Group plc and Reckitt Benckiser (Brands) Limited pursuant to section 82 of the Enterprise Act 2002

- (a) 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 K-Y business in the UK), by Reckitt Benckiser Group plc and Reckitt Benckiser (Brands) Limited (the Acquirers) from McNeil-PPC, Inc., a subsidiary of Johnson & Johnson and its affiliates (the Vendors), for further investigation and report by a group of CMA panel members (the inquiry group).
- (b) On 12 August 2015 the CMA, published a report on the *Anticipated acquisition by Reckitt Benckiser Group plc of the K-Y brand in the UK* (the Report).
- (c) In the Report, the CMA concluded that:
- (i) the anticipated acquisition by Reckitt Benckiser Group plc of the K-Y business in the UK may be expected to result in the creation of a relevant merger situation;
 - (ii) the creation of that situation may be expected to result in a substantial lessening of competition (SLC) in the UK market for the supply of personal lubricants to grocery retailers and national pharmacy chains;
 - (iii) the CMA should take action to remedy the SLC and the adverse effects likely to arise from it;
 - (iv) undertakings should be given to the CMA or where undertakings are not agreed an order made to give effect to the remedies identified by the CMA in Chapter 12 of the Report; and
 - (v) the creation of that situation may not be expected to result in an SLC in relation to the UK markets for the supply of personal lubricants in the online, specialist (adult) shops and independent pharmacies.

- (d) The Report further concluded that the anticipated acquisition of the K-Y business in the UK should be allowed to proceed on condition that prior to completion the Acquirers enter into an agreement to license the K-Y brand, rights and intellectual property rights in the UK in line with the criteria set out in Chapter 12 of the Report, *inter alia*, on an exclusive, comprehensive and irrevocable basis for a total period of eight years, including a blackout period of at least one year, to enable the licensee to successfully transition from the K-Y brand to its own brand.
- (e) In addition, the Report concluded that the commitment to license will be effected either by means of undertakings provided by the Acquirers and accepted by the CMA or by an order made by the CMA. Within [X] from when the final undertakings or order are in place, the Acquirers would need to agree licensing arrangement(s) with a suitable licensee. Those arrangements would have to be approved by the CMA and conform to the criteria specified in Chapter 12 of the Report. If the remedy is not implemented within this period, the CMA reserved the right to require appointment of a trustee to oversee the licensing process to a suitable licensee at the cost of the Acquirers in order to ensure that the licensing arrangement(s) with a suitable licensee is in place.
- (f) Accordingly, the Acquirers give to the CMA the following Undertakings under section 82 of the Act for the purpose of remedying the SLC identified in the Report and the adverse effects which flow from it.

1. Interpretation

- 1.1 The appendices form part of these Undertakings.
- 1.2 The purpose of these Undertakings is to give effect to the Report and they shall be construed accordingly.
- 1.3 Any word or expression used in these Undertakings or the recitals to these Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report.
- 1.4 In these Undertakings the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term of phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 1.5 The headings used in these Undertakings are for convenience and shall have no legal effect.

- 1.6 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 1.7 References to recitals, paragraphs, subparagraphs, appendices, Parts and schedules are references to the recitals to, paragraphs and subparagraphs of, appendices, Parts and schedules to these Undertakings unless otherwise stated.
- 1.8 Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons include bodies of persons whether corporate or incorporate.

1.9 Further, in these Undertakings:

‘Acquirer(s)’ means Reckitt Benckiser Group plc and Reckitt Benckiser (Brands) Limited and their subsidiaries;

‘Act’ means the Enterprise Act 2002;

‘Affiliate’, a person is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act;

‘Approved Licensee’ means a suitable licensee approved by the CMA pursuant to the Licensee Approval Requirements set out in Appendix 2;

‘Approved Licensing Agreement(s)’ means a binding agreement or agreements pursuant to which the Acquirers license the Licensed Operations for the Licence Period to an Approved Licensee, as approved by the CMA and satisfying the criteria set out in Appendix 2 and which takes effect immediately upon completion of the Merger;

‘Approved Timetable’ has the meaning given in paragraph 6.1;

‘Asset Maintenance Undertakings’ means the Undertakings of Part 3 of these Undertakings;

‘Asset Purchase Agreement(s)’ means 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 the ancillary agreements executed in connection therewith;

‘Associated Person’ means a person who is an associated person within the meaning of section 127 of the Act;

'Blackout period' means a period during which the Acquirers and the Approved Licensee are not permitted to use the K-Y brand, rights and Intellectual Property Rights in and to the K-Y brand for any SWB products sold in the UK, in accordance with Part 4 of these Undertakings;

'Business' has the meaning given by section 129(1) and (3) of the Act;

'Candidate Licensee(s)' means the preferred licensees mentioned in Parts 5 and 6 of these Undertakings;

'CMA' means the Competition and Markets Authority;

'Commencement Date' means the date on which these Undertakings are accepted by the CMA;

'Compliance Statement' has the meaning given by Part 12 of these Undertakings and is to be in the format set out in Appendix 4;

'Confidential Information' means business secrets, confidential know-how, commercially-sensitive information, intellectual property or any other information of a confidential nature, which is not in the public domain or known to the Acquirers at the date of the entry into force of the Interim Undertakings, namely on 17th June 2015, otherwise than by breach of these Undertakings;

'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;

'Directions' means directions or instructions given to the Acquirers by the CMA pursuant to Parts 8 and 10;

'Divestiture Period' means the period beginning on the Commencement Date of these Undertakings and terminating after [X] and any Extended Period;

'Existing SKUs' means all personal lubricant products currently sold under the K-Y brand in the UK by the Vendors, as listed in Appendix 3;

'Extended Period' means any extension granted pursuant to a request by the Acquirers at the CMA's discretion and running immediately after the expiry of the [X] period starting from the Commencement Date within which the Acquirers may seek to complete the Approved Licensing Agreement(s);

'Group of Interconnected Bodies Corporate' means a group of interconnected bodies within the meaning of section 129(2) of the Act, as constituted from time to time;

'Intellectual Property Rights' means all rights in and to intellectual property in relation to the K-Y brand, which are required to operate the K-Y Business or which are required to allow the Approved Licensee to apply the K-Y brand to the Existing SKUs and on a co-branded basis to personal lubricant products, including, among other things, domain names, copyrights, patent rights, patent applications, know-how, design rights, and trademark rights and are referred to in Appendix 1;

'Interim Undertakings' means the undertakings adopted by the CMA on **17 June 2015** for the purpose of ensuring that no action was taken pending the determination of the reference which might prejudice the reference or impede the taking of any action by the CMA under Part 3 of the Act and have been offered by the Acquirers and the Vendors and/or any other Interim Undertakings offered by the Acquirers and the Vendors and to be accepted by the CMA;

'Johnson & Johnson' (company number **0000200406** with a registered office at **One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933**) is a US-based multinational group which supplies healthcare products worldwide and is the ultimate parent of McNeil-PPC, Inc.;

'K-Y' means the K-Y brand owned by the Vendors in the UK as at the Commencement Date;

'K-Y Business', means, for the purposes of these Undertakings, the business of supplying the Existing SKUs and any co-branded personal lubricant products developed in the future by the Approved Licensee under the terms of the Approved Licensing Agreement(s). The K-Y Business of supplying the Existing SKUs is operated by the Vendors as at the Commencement Date;

'Licence Period' means a period of eight years in total, inclusive of at least one-year Blackout Period, which begins in accordance with Part 4 of these Undertakings;

'Licensed Operations' means the assets, rights, Intellectual Property Rights, information, assignments, licences, consents, in and to the K-Y brand, and other operations, which are required to operate the K-Y Business or to allow the Approved Licensee to apply the K-Y brand to the Existing SKUs and on a co-branded basis to personal lubricant products, as listed in Appendix 1, to be

licensed to the Approved Licensee as part of the Approved Licensing Agreement(s);

'Licensee Approval Requirements' means the requirements set out in Chapter 12 of the Report and repeated for ease of reference in Appendix 2 to these Undertakings;

'Licensing Undertakings' means the Undertakings of Part 4 of these Undertakings;

'McNeil-PPC, Inc.' (company number **TIN 22-1922092** with a registered office at **7050 Camp Hill Rd, Fort Washington, PA 19034**) is the vendor of the business of the supply of personal lubricant products under the K-Y brand (inclusive of the K-Y business in the UK) and a subsidiary of Johnson & Johnson;

'NHS' means National Health Service;

'Order(s)' means any Order(s) imposed on the Acquirers or the Vendors in relation to the Merger pursuant to the Act;

'The Reckitt Benckiser Business' means the business of supplying personal lubricant products under the Durex brand by Reckitt Benckiser Group plc and its subsidiaries as at the Commencement Date;

'Reckitt Benckiser Group plc' (registered in England & Wales, company number **06270876** with a registered office at **103–105 Bath Road, Slough, Berkshire, SL1 3UH**) is the ultimate owner of all assets belonging to Reckitt Benckiser and the prospective Acquirer of the business of supplying personal lubricant products under the K-Y brand in the UK;

'Reckitt Benckiser (Brands) Limited' (registered in England & Wales, company number **08192386** with a registered office at **103–105 Bath Road, Slough, Berkshire, SL1 3UH**) holds the intellectual property rights for the Durex Brand and is the direct prospective Acquirer of the business of supplying personal lubricant products under the K-Y brand in the UK;

'Related Person' means any subsidiary, affiliate or associated person of the Acquirers and the Vendors from time to time;

'SLC' means a substantial lessening of competition pursuant to section 36 of the Act;

'Subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'SWB Products' means the sexual well-being category of products, as described in paragraph 2.1 of the Report;

'The Merger' means the anticipated acquisition of the business of supplying personal lubricant products under the K-Y brand in the UK by the Acquirers from the Vendors;

'Transitional Services' means services such as those referred to in paragraphs 4.9 and 4.13;

'Trustee' means a person appointed to carry out the Trustee Obligation in accordance with Parts 7 to 9 of these Undertakings;

'Trustee Divestiture Period' means a period of [X] that follows the expiration of the Divestiture Period in order for the Trustee to meet the Trustee Obligation commencing on a date specified by the CMA after the expiration of the Divestiture Period;

'Trustee Obligation' means bringing about the Approved Licensing Agreement(s) and includes the performance of all ancillary tasks as are necessary or desirable for the purpose of making the Approved Licensing Agreement(s) promptly and in any event within the Trustee Divestiture Period;

'UK' means the United Kingdom of Great Britain and Northern Ireland;

'Undertakings' means these Undertakings;

'Vendor(s)' means Johnson & Johnson, McNeil-PPC, Inc., and their affiliates and subsidiaries;

'Vendor(s) Undertakings' means any Undertakings offered by the Vendors and to be accepted by the CMA in relation to the Merger pursuant to section 82 of the Act;

'Working Day' means a day other than a Saturday or Sunday or a public holiday in England, Wales or Scotland, and any reference in these Undertakings to 'days' means calendar days.

2. Commencement

- 2.1 These Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.

3. Asset Maintenance Undertakings

- 3.1 Except with the prior written consent of the CMA the Acquirers undertake that neither they nor their subsidiaries nor any Related Person shall during the Divestiture Period (and during the Trustee Divestiture Period if applicable) and until such time as the Approved Licensing Agreement(s) enters into effect take any action (inclusive of the exercise of contractual rights and/or obligations/exercise of intellectual property rights) which:
- 3.1.1 completes the Merger, or causes or permits any other integration of the business for the supply of personal lubricant products under the K-Y brand in the UK with the Reckitt Benckiser Business;
 - 3.1.2 impairs the ability of the business for the supply of personal lubricant products under the K-Y brand in the UK and the Reckitt Benckiser Business to compete independently in any of the market(s) affected by the Merger;
 - 3.1.3 frustrates the Vendors' compliance with any Undertakings offered by them or Order(s) imposed on them in relation to the Merger.
- 3.2 The CMA will be deemed to have given consent for the purposes of paragraph 3.1 when the Approved Licensing Agreement(s) and any other agreements or arrangements ancillary or connected to the Approved Licensing Agreement(s) enters into effect, in accordance with the procedure set out in Part 5 of these Undertakings.
- 3.3 Until such time as the Approved Licensing Agreement(s) has been entered into effect and the CMA has been deemed to have given consent pursuant to paragraph 3.2, the Acquirers will procure to the extent they are legally able to do so, that except with the prior written consent of the CMA, no Confidential Information relating to the business for the supply of personal lubricant products under the K-Y brand in the UK will pass between the Acquirers and the Vendors save that Confidential Information may be exchanged on a counsel-to-counsel basis between external advisers of the Acquirers and the Vendors for the purposes of bringing about the Approved Licensing Agreement(s) and completing the Merger.

4. Licensing Undertakings

- 4.1 The Acquirers undertake that within the Divestiture Period, and prior to completion of the Merger, they will enter into an exclusive, comprehensive and irrevocable Approved Licensing Agreement(s) for a Licence Period of a total of eight years, including a Blackout Period of at least one year, in

accordance with the terms set out in Part 4 and the procedure set out in Part 5 of these Undertakings.

- 4.2 If unsuccessful in entering into the Approved Licensing Agreement(s) within the Divestiture Period, the Acquirers undertake that, by no later than 5 Working Days following the expiry of the Divestiture Period, they shall secure at their cost the appointment of a Trustee to oversee on behalf of the CMA the licensing process and to ensure that the Approved Licensing Agreement(s) is put in place, in accordance with Parts 7 to 9 of these Undertakings.
- 4.3 Subject to prior CMA approval of the proposed duration of the Blackout Period, the Acquirers will accept a longer than one-year Blackout Period, within the eight-year total, at the option of the Approved Licensee.
- 4.4 The Acquirers undertake to use all reasonable endeavours to secure a Candidate Licensee(s) that will satisfy the Licensee Approval Requirements.
- 4.5 The Acquirers undertake to grant full rights to the Licensed Operations to the Approved Licensee to facilitate sales of personal lubricants in the markets for grocery retailers and national pharmacy chains, online, specialist-adult shops, independent pharmacies and the NHS.
- 4.6 The Acquirers undertake to procure from the Vendors and to then make available to the Approved Licensee the Licensed Operations, to enable the Approved Licensee to operate the K-Y Business under the Approved Licensing Agreement(s) for the Licence Period.
- 4.7 The Acquirers undertake not to introduce, market, sell, supply or distribute any SWB Products under the K-Y brand in the UK during the Licence Period. In addition, the Acquirers undertake not to use the Licensed Operations in the UK during the Licence Period.
- 4.8 Subject to paragraph 4.9, the Acquirers undertake to grant the Approved Licensee the exclusive right to use the licence under the Approved Licensing Agreement(s) (including to develop, manufacture, produce, market, sell and distribute) for the supply of personal lubricant products in the UK under the K-Y brand during the Licence Period, in order to enable the Approved Licensee to successfully transition from the K-Y brand to its own brand, subject to the use limitations mentioned in paragraph 4.11.
- 4.9 As an exception to the requirements of paragraph 4.8, the Acquirers, may produce K-Y personal lubricants in the UK if the Approved Licensee requires the Acquirers to supply the K-Y personal lubricants to the Approved Licensee, for example for a transitional period pursuant to paragraph 4.10, or where the

K-Y personal lubricants produced in the UK are marketed and sold by the Acquirers outside the UK.

- 4.10 The Acquirers undertake that at the request of the Approved Licensee the Existing SKUs will be supplied at cost (including transport costs) during a transitional period of up to 12 months from the date the Approved Licensing Agreement(s) comes into effect in order to allow the Approved Licensee to set up its own manufacturing or independent production arrangements.
- 4.11 The Acquirers undertake to permit the use by the Approved Licensee of the K-Y brand : a) alone under the K-Y brand or on a co-branding basis for the supply of the Existing SKUs and b) only on a co-branding basis for the supply of personal lubricant products, other than the Existing SKUs. For the purposes of these Undertakings, co-branding means the use of the K-Y brand in conjunction with another brand.
- 4.12 The Acquirers undertake to accept a one-off payment for use of the licence under the Approved Licensing Agreement(s) with no annual or other periodic licensing fees.
- 4.13 The Acquirers undertake to procure from the Vendors or to use all reasonable endeavours to supply themselves additional Transitional Services to those set out in paragraph 4.9 above if requested by the Approved Licensee and to the extent these would have been provided to the Acquirers under the Asset Purchase Agreement between the Acquirers and the Vendors. Any costs associated with the supply of these additional Transitional Services will be borne by the Approved Licensee.
- 4.14 The Acquirers undertake to transfer to the Approved Licensee all rights, title and interests in existing contracts regarding the supply of personal lubricant products under the K-Y brand in the UK.
- 4.15 The Acquirers undertake to license to the Approved Licensee the right to use the K-Y formula in perpetuity, if required by the Approved Licensee.
- 4.16 If requested by the Approved Licensee, the Acquirers undertake to transfer to the Approved Licensee all rights, title and interests in existing contracts to supply personal lubricant products to the NHS. For the avoidance of doubt, this provision does not oblige the Approved Licensee to supply personal lubricant products to the NHS.
- 4.17 The Acquirers undertake to carry out these Undertakings having due regard to the findings in Chapter 12 of the Report and in accordance with the terms specified by the CMA therein.

- 4.18 The Acquirers recognise that in considering whether to approve any agreement(s) the CMA shall consider whether the terms of the Licensing Agreement(s) and any other agreements or arrangements ancillary or connected to the Licensing Agreement(s) would give rise to a material risk that the Licensing Agreement(s) (in whole or in part) would not remedy the SLC and any adverse effects likely to arise from it.
- 4.19 The Acquirers undertake that as of the Commencement Date neither they nor their subsidiaries nor any Related Person shall take any action (inclusive of the exercise of contractual rights and/or obligations/exercise of intellectual property rights) which:
- 4.19.1 impedes the taking of any action under the Act which may be justified by the CMA's decisions in the Report; or
- 4.19.2 frustrates compliance with these Undertakings.
- 4.20 Should a breach by the Vendors, including a breach of the Vendors' Undertakings or Order(s) occurs, the Acquirers undertake to use all contractual courses of action available to them pursuant to the Asset Purchase Agreement(s) against the Vendors for the purpose of complying with these Undertakings. Provided the Acquirers have used all reasonable endeavours to comply and have exercised their contractual rights against the Vendors for this purpose, the inability of the Acquirers to comply with the relevant provision of the Undertakings shall not be considered a deliberate breach. However, in such circumstances, the CMA reserves the right to review whether the Undertakings remain capable of substantial compliance with a view to delivering the remedy set out in the Report and if necessary, to reconsider whether the conditions of the Merger being allowed to complete are capable of being met.

5. Procedure for consent and notification

- 5.1 The Acquirers undertake that where they require the consent or approval of the CMA (however that requirement is expressed in these Undertakings) they will seek the consent or approval in writing, which shall include email.
- 5.2 The Acquirers undertake that any application by them for the CMA's consent or approval shall make full disclosure of every material fact and matter within their knowledge that they believe is relevant to the CMA's decision.
- 5.3 The Acquirers recognise that where the CMA grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.

- 5.4 In the event that the Acquirers discover that an application for consent or approval has been made without full disclosure to the CMA, the Acquirers undertake to:
- 5.4.1 inform the CMA in writing identifying the information that they omitted to include in the application for consent within 2 Working Days of becoming aware that the relevant information is misleading or incomplete; and
 - 5.4.2 at the same time or no later than 2 Working Days starting with the date on which it has informed the CMA of the omission in accordance with paragraph 5.4.1 above, provide to the CMA an application for consent that includes the missing information.
- 5.5 Unless a different period is expressly provided for in these Undertakings, the Acquirers shall use all reasonable endeavours to make each application or to procure that each application, for consent or approval is made so that it is received by the CMA at least 5 Working Days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of these Undertakings.
- 5.6 The Acquirers recognise that the CMA shall not be required to use more than its reasonable endeavours to grant or refuse any consent or approval within the period referred to in paragraph 5.5 above in particular where the CMA considers that it is necessary to carry out an investigation or to consult any other person prior to granting such consent or approval.
- 5.7 Where in the Acquirers' reasonable opinion they have identified preferred Candidate Licensees with an interest in the licensing of the Licensed Operations of the K-Y Business and meeting the requirements listed in Appendix 2, the Acquirers shall promptly apply to the CMA for a decision on whether or not any of these constitute an Approved Licensee. In order for the Candidate Licensee(s) to satisfy the CMA's Licensee Approval Requirements as set out in Appendix 2 to these Undertakings, the Acquirers shall use all reasonable endeavours to assist the CMA in obtaining further information from the Candidate Licensee(s) where necessary.
- 5.8 The Acquirers recognise that in order to bring about an Approved Licensing Agreement(s), the CMA must approve any binding agreement relating to the licensing of the Licensed Operations (such approval not to be unreasonably withheld). The final draft Approved Licensing Agreement(s) and all necessary agreements and documentation shall be sent to the CMA promptly for approval but no later than 10 Working Days before the day on which the agreement(s) will be signed.

6. Licensing Reporting Obligations

- 6.1 The Acquirers undertake that within the period of 5 Working Days from the Commencement Date they will provide a written report to the CMA setting out the timetable that they propose to adopt, subject to the CMA's approval, and how they propose to ensure that the Approved Licensing Agreement(s) is entered into during the Divestiture Period (the 'Approved Timetable'). The report will outline the progress that the Acquirers have made towards entering into the Approved Licensing Agreement(s) and the steps that have otherwise been taken to comply with the Undertakings and shall in particular report on:
- 6.1.1 the status of any discussions that have been held with Candidate Licensees and progress made regarding entering into the Approved Licensing Agreement(s); and
 - 6.1.2 the status of any information sent to Candidate Licensees and the identities of the persons to whom it has been circulated and the responses received; and
 - 6.1.3 such other matters as may be directed by the CMA from time to time.
- 6.2 The Acquirers undertake to provide such reports to the CMA every four weeks until the Approved Licensing Agreement(s) has been entered into effect. The reports will include any developments relating to the licensing process and an update on the progress that has been made since the last report. If a Trustee is appointed, with the consent of the CMA such reports may be provided through the Trustee.
- 6.3 The Acquirers undertake that in the report to the CMA they shall, *inter alia*, provide to the CMA:
- 6.3.1 to the extent this has been provided to the Acquirers, the name, address, email address, contact person and telephone number of each Candidate Licensee who has expressed an interest in entering into an Approved Licensing Agreement(s) since the publication of the CMA's final Report;
 - 6.3.2 the steps that have otherwise been taken to comply with these Undertakings, including information as listed in paragraphs 6.1.1 to 6.1.3 above.
- 6.4 In the event that the Acquirers do not meet a step as set out in the Approved Timetable, or are otherwise delayed in implementing any requirement of these Undertakings, the Acquirers undertake to inform the CMA in writing of the occurrence and the reasons for the failure promptly, but not later than 2

Working Days of becoming aware that a step in the Approved Timetable has not been met.

7. Trustee – appointment procedure and functions

- 7.1 As mentioned in paragraph 4.2. and without prejudice to the CMA's order-making power under section 83 of the Act, if no Approved Licensing Agreement(s) has been entered into and effected during the Divestiture Period, the Acquirers undertake that by no later than 5 Working Days following the expiry of the Divestiture Period, they shall secure at their cost the appointment of a Trustee to give effect to the Trustee Obligation, oversee the licensing process on behalf of the CMA and ensure that an Approved Licensing Agreement(s) to an Approved Licensee for the Licence Period is entered into effect.
- 7.2 The appointment of the Trustee and his terms and conditions must be approved by the CMA. The Acquirers must inform the CMA of the identity of the proposed Trustee as soon as is reasonably practical and in any event by no later than 2 days after the expiry of the Divestiture Period and provide the CMA with draft terms and conditions of appointment.
- 7.3 The proposal shall contain sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in paragraph 7.4 below and shall include, *inter alia*:
- 7.3.1 the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil the Trustee Obligation; and
- 7.3.2 a schedule of the steps to be taken to give effect to the mandate.
- 7.4 The Trustee must possess appropriate qualifications and experience to carry out its functions. The Trustee must act on behalf of the CMA and be under an obligation to the CMA to carry out his functions to the best of his abilities. The Trustee must neither have been or have become exposed to a conflict of interest that impairs the Trustee's objectivity and independence in discharging his duties under these Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA. The Acquirers shall remunerate and reimburse the Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Trustee's independence or ability to effectively and properly carry out his functions.
- 7.5 The CMA may approve or reject any or all of the proposed Trustees (such approval not to be unreasonably withheld) and may approve the proposed

mandate subject to any modifications it deems necessary for the Trustee to fulfil the Trustee Obligation. If only one name is approved, the Acquirers shall use their best endeavours to appoint, or cause to be appointed, the individual or institutions concerned as Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, the Acquirers shall be free to choose the Trustee to be appointed from among the names approved. The Acquirers undertake to appoint the Trustee within 2 Working Days from the CMA's approval of the terms of the mandate approved by the CMA.

- 7.6 Once the Trustee has been approved by the CMA and appointed, the Acquirers must provide the CMA with a copy of the agreed terms and conditions of appointment.
- 7.7 If the proposed Trustee(s) is rejected by the CMA, the Acquirers shall submit the names of at least two further persons within 2 Working Days starting with the date on which they were informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 7.2 et seq. above.
- 7.8 The provisions of paragraph 7.9 below shall apply if:
 - 7.8.1 the Acquirers fail to nominate persons in accordance with paragraphs 7.2 et seq above; or
 - 7.8.2 those further persons nominated by the Acquirers are rejected by the CMA in accordance with paragraph 7.7 above; or
 - 7.8.3 the Acquirers are unable for any reason to conclude the appointment of the Trustee within the time limit specified by the CMA.
- 7.9 If paragraph 7.8 applies the CMA shall nominate one or more persons to act as Trustee, and the Acquirers shall appoint or cause to be appointed such Trustee within 2 Working Days starting with the date of such nomination under the term of a Trustee mandate approved by the CMA.
- 7.10 The Trustee mandate shall provide that the Trustee:
 - 7.10.1 must take such steps as he reasonably considers necessary in order to carry out his functions effectively;
 - 7.10.2 must comply with any reasonable requests made by the CMA for the purpose of carrying out his functions under these Undertakings;
 - 7.10.3 will carry out the functions set out in paragraph 7.11 below;

- 7.10.4 will fulfil the Trustee Obligation and undertake such matters preparatory to giving effect to the Trustee Obligation or part thereof;
 - 7.10.5 will ensure that the Acquirers comply with their obligations under these Undertakings by overseeing the licensing process to a suitable and Approved Licensee and ensuring an Approved Licensing Agreement(s) is agreed and entered into effect; and
 - 7.10.6 is subject to the duty of confidentiality referred to in paragraph 8.5 below.
- 7.11 The Trustee functions set out in this paragraph are to ensure compliance with these Undertakings and progress towards satisfaction of an Approved Licensing Agreement(s) and shall in particular include:
- 7.11.1 ensuring compliance by the Acquirers with these Undertakings;
 - 7.11.2 overseeing the licensing process to the Approved Licensee;
 - 7.11.3 taking necessary steps towards the finding of a suitable Candidate Licensee and towards the preparation of the necessary agreements for the Approved Licensing Agreement(s);
 - 7.11.4 attending any meetings and ensuring all necessary communications in connection with the licensing process;
 - 7.11.5 performing all ancillary tasks that are necessary or desirable for the purpose of making the Approved Licensing Agreement(s) promptly;
 - 7.11.6 bringing about and ensuring that the necessary and effective Approved Licensing Agreement(s) has been agreed and is in place and effected with the Approved Licensee; and
 - 7.11.7 inform the CMA promptly of any material developments arising from the operation of its functions and provide to the CMA a written report every four weeks.
- 7.12 The CMA reserves the right to require the Acquirers to commission an independent audit of the Acquirers' compliance with these Undertakings at any time while these Undertakings remain in force.

8. Trustee – duties and obligations of the Acquirers

- 8.1 The Acquirers recognise and acknowledge that:

- 8.1.1 the CMA may, on its own initiative or at the request of the Trustee or the Acquirers, give written Directions or instructions to the Trustee in order to assist it in the discharge of the Trustee Obligation;
 - 8.1.2 the CMA may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of the Trustee Obligation such terms and conditions as it considers appropriate; and
 - 8.1.3 the Trustee shall protect the legitimate financial and other interests of the Acquirers subject to the Trustee's overriding obligations to give effect to the Trustee Obligation.
- 8.2 The Acquirers recognise and acknowledge that the Trustee shall be entitled to take such steps and measures it considers necessary to discharge the Trustee Obligation and to that end the Trustee may give written Directions to the Acquirers, as applicable. The Acquirers undertake to comply with such Directions or to procure compliance with such directions as are within their powers and to take such steps within their competence as the Trustee may specify.
- 8.3 The Acquirers recognise and acknowledge that in the performance of the Trustee Obligation the Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of the Acquirers and the Acquirers undertake that they shall not seek to create or vary the obligations and duties of the Trustee except with the CMA's prior written consent.
- 8.4 The Acquirers undertake to provide the Trustee with all such cooperation, assistance and information (including by the production of financial or other information whether or not such information is in existence at the time of the request relevant to the satisfaction of the Approved Licensing Agreement(s) but excluding any material properly the subject of legal privilege) as the Trustee may reasonably require in the discharge of the Trustee Obligation.
- 8.5 The Acquirers recognise and acknowledge that the Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of the Trustee Obligation (save where material is properly the subject of legal privilege) and the Acquirers undertake to use all reasonable endeavours to ensure that the Trustee is provided upon request with copies of any such documents by the Vendors, all relevant costs to the Vendors associated with meeting this obligation to be reimbursed by the Acquirers. The Acquirers undertake to make available to the Trustee one or more offices on their premises, and

ensure personnel where necessary are available for meetings in order to provide the Trustee with all information necessary for the performance of the Trustee Obligation.

- 8.6 The Acquirers undertake to grant reasonable comprehensive powers of attorney, duly executed, to the Trustee to enable it to discharge the Trustee Obligation including by the appointment of advisers to assist with the licensing process. The Acquirers undertake that upon the reasonable request of the Trustee the Acquirers shall execute the documents required to give effect to the Trustee Obligation.
- 8.7 The Acquirers undertake to hold the Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Trustee Obligation and the Acquirers recognise and acknowledge that the Trustee, its employees, agents or advisers shall have no liability to the Acquirers or any of its subsidiaries for any liabilities arising out of the proper performance of the Trustee Obligation, except to the extent that such liabilities result from the negligence or bad faith of the Trustee, its employees, agents or advisers.
- 8.8 The Acquirers undertake that at their expense the Trustee may appoint advisers if the Trustee considers the appointment of such advisers reasonably necessary or appropriate in the discharge of the Trustee Obligation, provided that any fees and other expenses incurred by the Trustee are reasonably incurred. Should the Acquirers refuse to approve the advisers proposed by the Trustee, the CMA may, after consulting with the Acquirers, approve and direct the appointment of such advisers.
- 8.9 The Acquirers undertake to make no objection to the terms of the Licensed Operations or any part thereof save on the grounds of bad faith by the Trustee or failure of the Trustee to reasonably protect the legitimate financial interests of the Acquirers, subject always to the Trustee Obligation; and where the Acquirers wish to make an objection on the grounds of bad faith they shall submit to the CMA a notice setting out their objections within 2 Working Days from the day on which they became aware of the fact or facts giving rise to their objection.

9. Trustee-replacement, discharge and reappointment

- 9.1 The Acquirers acknowledge that if the Trustee ceases to perform the Trustee Obligation, or for any other good cause, including the exposure of the Trustee to a conflict of interest, the CMA may, after consulting the Trustee, require the Acquirers to replace the Trustee.

- 9.2 If the Trustee is removed under paragraph 9.1 above, the Trustee may be required to continue in its post until a new Trustee is in place to whom the Trustee has effected a full handover of all relevant information. The new Trustee shall be appointed in accordance with the procedure contained in Part 7 above.
- 9.3 The Acquirers recognise and acknowledge that, other than in accordance with paragraph 9.1 above, the Trustee shall cease to act as Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Trustee has been entrusted have been met.

10. Directions

- 10.1 The Acquirers shall comply promptly with such written Directions as the CMA may from time to time give:
- 10.1.1 to take such steps as may be specified or described in the Directions for the purpose of carrying out or securing compliance with these Undertakings; or
 - 10.1.2 to do or refrain from doing anything so specified or described which they might be required by these Undertakings to do or refrain from doing.
- 10.2 Any delay by the CMA in making a written Direction shall not affect the obligations of the Acquirers at such time as the CMA makes any written Direction under paragraph 10.1.

11. Variations to these Undertakings

- 11.1 The terms of these Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.
- 11.2 Where a request for consent is sought pursuant to paragraph 11.1 the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request.
- 11.3 The consent of the CMA shall not be unreasonably withheld.

12. Compliance with these Undertakings

- 12.1 The Acquirers shall procure that any member of the same Group of Interconnected Bodies Corporate and each of their subsidiaries shall comply with these Undertakings as if they had been given by them. Any actions or

omissions of the members of the same Group of Interconnected Bodies Corporate as the Acquirers shall be attributed to the Acquirers for the purposes of these Undertakings.

- 12.2 Where any Affiliate of the Acquirers is not a member of the same Group of Interconnected Bodies Corporate as the Acquirers, the Acquirers shall use their best endeavours to procure any such Affiliate shall comply with these Undertakings as if it had given them.
- 12.3 The Acquirers shall deliver a Compliance Statement to the CMA during each year in which these Undertakings remain in force, in the form attached as Appendix 4 to these Undertakings, and promptly provide to the CMA such information as it may reasonably require for the purpose of monitoring or enforcing compliance with these Undertakings. Each Compliance Statement shall confirm compliance with these Undertakings in the relevant calendar year and state instances in the relevant calendar year where a breach or potential breach of these Undertakings have occurred. The first Compliance Statement shall be delivered by 1 November 2016.
- 12.4 The Acquirers undertake that should they at any time become aware of any breach of any provision of these Undertakings they shall inform the CMA of the breach and the circumstances in which it arose in writing within 7 Working Days following the date on which it became aware of the breach.
- 12.5 Any communication from the Acquirers to the CMA under these Undertakings shall be addressed to: the Manager, Remedies Monitoring Team, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or by email to RemediesManager@cma.gsi.gov.uk or such other postal or email address as the CMA may direct in writing.

13. General obligation to provide information to the CMA

- 13.1 The Acquirers undertake that they shall promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under these Undertakings or under sections 82, 83, 92, and 94(6) of the Act.
- 13.2 Where any person, including the Trustee, must provide information in relation to the Acquirer to the CMA under or in connection with these Undertakings, whether in the form of any notice, application, report or otherwise, the Acquirers undertake that they will procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of the Acquirers to any person other than to the CMA, without the prior written consent of both the CMA and the Acquirers.

14. Service

- 14.1 The Acquirers hereby authorise Norton Rose Fulbright LLP, whose address for service is 3 More London Riverside, London, SE1 2AQ to accept on behalf of the Acquirers service of all documents, orders, requests, notifications or other communications connected with these Undertakings (including any such document which falls to be served on or sent to the Acquirers or any of their Subsidiaries in connection with any proceedings in courts in the UK).
- 14.2 Any document, order, request, notification or other communication connected with these Undertakings shall be deemed to have been validly served on the Acquirers if it is served on Norton Rose Fulbright LLP at its registered office (Reference: CMA Final Undertakings, attention: Mark Tricker and Caroline Thomas), and service or receipt shall be deemed to be acknowledged by such Acquirers' company if it is acknowledged by any employee of Norton Rose Fulbright LLP.
- 14.3 Paragraph 14.2 has effect irrespective of whether, as between Norton Rose Fulbright and the Acquirers, Norton Rose Fulbright has or continues to have any authority to accept and acknowledge service on behalf of the Acquirers, and no failure or mistake by the Acquirers (including a failure to notify the Acquirers of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Undertakings, including any proceeding or judgment pursuant to these Undertakings.

15. Effect of invalidity

- 15.1 The Acquirers undertake that should any provision of these Undertakings be contrary to law or invalid for any reason, the Acquirers (as the case may be) shall continue to observe the remaining provisions.

16. Extension of time

- 16.1 The Acquirers recognise and acknowledge that the CMA may, where it considers appropriate, in response to a written request from the Acquirers showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Undertakings within which the Acquirers, or the Trustee must take action.

17. Governing law

- 17.1 These Undertakings shall be governed by and construed in all respects in accordance with English Law.

17.2 Disputes arising concerning these Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

18. Termination and release

18.1 These Undertakings shall remain in force until the obligations of these Undertakings expire and until the expiry of the Licence Period, unless these Undertakings are varied, released or superseded prior to that date.

18.2 The Acquirers may write to the CMA seeking a release from these Undertakings if they consider there has been a material change in circumstances since the Commencement Date.

18.3 The variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

FOR AND ON BEHALF OF RECKITT BENCKISER, RECKITT BENCKISER (BRANDS) LIMITED AND THEIR SUBSIDIARIES

The Acquirer(s)' Licensed Operations

The Licensed Operations will include the assets, rights, Intellectual Property Rights, information, assignments, contracts, inventory, licences, and consents in and to the K-Y brand, and other operations to be licensed or otherwise transferred to the Approved Licensee under the Approved Licensing Agreement(s), which are required to operate the K-Y Business in the UK or which are required to allow the Approved Licensee to apply the K-Y brand to the Existing SKUs and on a co-branded basis to personal lubricant products.

The Licensed Operations are similar in scope to, and do not exceed, what the Vendors have agreed to sell, convey, assign, and transfer to the Acquirers under the Asset Purchase Agreement(s). The Licensed Operations include, *inter alia*, the following:

- the K-Y brand;
- information, licences, assignments, consents and any rights in and to the 'K-Y' brand, which are required to carry out the K-Y Business or which are required to allow the Approved Licensee to apply the K-Y brand to the Existing SKUs and on a co-branded basis, to personal lubricant products;
- all Intellectual Property Rights as previously defined;
- all manuals, documents, formulas, confidential information, including in relation to the formula for the Existing SKUs, compositions, technical data and files, drawings, specifications in relation to the K-Y Business;
- all rights, title and interest in all relevant customer contracts and rights to purchase orders;
- all customer contracts, lists and details (including terms of supply and shipping information);
- all customer contracts in relation to the medical professional channel, ie the two NHS-related contracts;
- inventories and existing stocks of K-Y personal lubricant products;
- all existing supply contracts;
- copies of all business, financial records and files relating to the K-Y brand and K-Y Business, including price lists, promotional plans, advertising, selling and

other promotional material, SKU lists, warehouse stockholding, stockholding in trade, forecast volumes, finished goods ordering process and lead times, distributor lists;

- existing regulatory information, authorisations and reasonable assistance with obtaining approvals where transferable;
- governmental marketing authorisations;
- goodwill in relation to the K-Y Business;
- copy of the relevant regulatory consents;
- Transitional Services as previously defined and if required, along with transitional assistance (such as a copy of the relevant regulatory consents for the K-Y formula), if required by the Approved Licensee;
- manufacture contract(s) offered at cost by the Acquirers, if required by the Approved Licensee; and
- anything else required to operate the K-Y Business under the K-Y brand or which is required to allow the Approved Licensee to apply the K-Y brand to the Existing SKUs and on a co-branded basis to personal lubricant products, and that Vendors have agreed to sell, convey, assign, and transfer to the Acquirers under the Asset Purchase Agreement(s).

Licensee Approval Requirements

These Licensee Approval Requirements are to be construed as consistent with and giving effect to paragraph 12.79 of the Report.

1. Independence

The Approved Licensee is independent of and unconnected to the Acquirers and the Vendors and any Associated Person or Affiliate of the Acquirers, the Vendors or such Group of Interconnected Bodies Corporate.

2. Capability and Adequate Finance

The Approved Licensee must have access to adequate and appropriate financial resources, assets and expertise to operate the licensed K-Y Business and to be an effective competitor over the Licence Period as a minimum.

3. Commitment to the relevant market

The Approved Licensee has the intention demonstrated by, *inter alia*, a suitable business plan (including managerial capability, operational capability and technical capability) to maintain and operate the licensed K-Y Business as a viable and active business in competition with the Acquirers and other competitors in the relevant market(s) so as to remedy the SLC identified in the Report and any adverse effect resulting from that SLC.

4. Absence of competitive or regulatory concern

The licence under the Approved Licensing Agreement(s) to the Approved Licensee must not raise competition concerns within any market or markets in the UK.

5. Demonstrable expertise within the SWB market

The Approved Licensee must have demonstrable expertise within the SWB market.

6. Presence in the market or ability to enter in the short term- viability of the Approved Licensee

The Approved Licensee must have presence in the market or the ability to enter it in the short term. The Approved Licensee must be a viable and independent business with the necessary competence and motivation to provide effective competition in the UK market for personal lubricants.

7. Capability of meeting supply requirements

The Approved Licensee must have the capability to meet the requirements of grocery retailers and national pharmacy chains supplied under the Approved Licensing Agreement(s), in addition to supplying the other retail channels: independent pharmacies, online and specialist (adult) shops.

8. Commitment to establish a new brand or develop an existing brand

The Approved Licensee must have a clear commitment to establish a new brand or develop an existing brand for personal lubricant products and over the Licence Period to transition the licensed personal lubricant products from the K-Y brand to its own (new or existing) brand, so as to have established a brand able to compete with the K-Y brand at the end of the Licence Period.

9. Provision of a business plan

The Approved Licensee must provide a business plan to explain its strategy during the Licence Period. This is to be provided to the CMA directly by the Approved Licensee and will not be reviewed by the Acquirers.

List of the Existing SKUs

All the personal lubricant products that are sold by the Vendors in the UK under the K-Y brand as at the Commencement Date and include one product, the basic K-Y jelly, in various sizes of packaging and in both sterile and non-sterile form, being the following:

- The basic K-Y jelly 50ml pack.
- The basic K-Y jelly 75ml pack.
- The basic K-Y jelly sterile 5g pack.
- The basic K-Y jelly sterile 82g pack.

Compliance Statement for Reckitt Benckiser, Reckitt Benckiser (Brands) Limited and their subsidiaries

1. I [insert name] confirm on behalf of Reckitt Benckiser, Reckitt Benckiser (Brands) Limited and their respective subsidiaries that in the period from [insert date] to [insert date] (the Relevant Period) and subject to any matters reported under paragraph 2 below:
 - (a) Reckitt Benckiser, Reckitt Benckiser (Brands) Limited, their subsidiaries and any member of the same Group of Interconnected Bodies Corporate, have complied during the Relevant Period with these Undertakings offered by Reckitt Benckiser and Reckitt Benckiser (Brands) Limited and accepted by the CMA on [date];
 - (b) Reckitt Benckiser, Reckitt Benckiser (Brands) Limited and their subsidiaries confirm that no breach or potential breach of any of these Undertakings has occurred during the Relevant Period;
 - (c) Reckitt Benckiser, Reckitt Benckiser (Brands) Limited and their subsidiaries confirm that they have not used the Licensed Operations in the UK during the Relevant Period;
 - (d) Reckitt Benckiser, Reckitt Benckiser (Brands) Limited and their subsidiaries confirm that they have not introduced, marketed, sold, supplied or distributed SWB Products under the K-Y brand in the UK during the Relevant Period;
 - (e) Reckitt Benckiser, Reckitt Benckiser (Brands) Limited and their subsidiaries confirm that no action has been taken by them or any member of the same Group of Interconnected Bodies Corporate during the Relevant Period that might prejudice compliance with these Undertakings or that impedes the taking of any action under the Act which may be justified by the CMA's decisions in the Report;
 - (f) Reckitt Benckiser, Reckitt Benckiser (Brands) Limited and their subsidiaries confirm that they continue during the Relevant Period to meet their licensing obligations under the Approved Licensing Agreement(s);
 - (g) Reckitt Benckiser, Reckitt Benckiser (Brands) Limited and their respective subsidiaries remain in full compliance with these Undertakings and will continue to keep the CMA informed of any such information as the CMA may reasonably require for the purpose of monitoring or enforcing

compliance with these Undertakings in accordance with paragraph 12.3 of these Undertakings;

Non-compliance

- 2. I confirm that details have been provided to the CMA of:
 - (a) Any incidences of non-compliance, breaches or potential breaches that have occurred during the Relevant Period, as notified to the CMA pursuant to paragraph 12.4 of these Undertakings, and of the particular Parts of these Undertakings that have been breached;
 - (b) Steps taken to deal with the incidences and breaches described in paragraph 2.a above.

Interpretation

- 3. Terms defined in these Undertakings have the same meaning in this Compliance Statement.

FOR AND ON BEHALF OF RECKITT BENCKISER, RECKITT BENCKISER (BRANDS) LIMITED AND THEIR SUBSIDIARIES

Signature

Name

Title

Date