

RECKITT BENCKISER/K-Y BRAND MERGER INQUIRY

Summary of hearings with Tesco on 23 February and 18 March 2015

The proposed merger

1. Tesco said it did not have concerns about the proposed merger between Durex personal lubricants (owned by Reckitt Benckiser (RB)) and K-Y jelly (owned by Johnson & Johnson (J&J)). Tesco said the context was the small size of the market. K-Y jelly was worth about [§] of turnover a year, which was [§] of the whole category, which was worth [§] a year. RB's turnover within the category was [§], so K-Y jelly was [§].

Tesco's negotiations with RB and J&J

2. Tesco said that it stocked Durex, K-Y and own label lubricants.
3. Tesco said that the cost price increases for Durex occurred about [§].
4. [§]
5. Tesco said it had not increased prices for its own label products when Durex retail prices increased. [§]
6. K-Y has not increased its cost price to Tesco since [§]. The most recent retail price increase was on [§].
7. Tesco said it negotiated bilaterally with each supplier and it [§].
8. Tesco said that if, after a merger, RB increased prices on personal lubricants, it would wish to examine in detail why it was proposing such increases and would expect to see justification for the increases. Tesco said that if did not accept the increased prices it could decide not to buy the products just as the supplier could decide not to continue supplying at the existing cost price. However, the priority was to ensure that it stocked the right product mix for its customers.
9. Tesco said that it stocked K-Y across all formats but Durex was only stocked in larger formats. K-Y had a bigger distribution than Durex.
10. [§]

RB's cost price increases for Durex personal lubricants

11. Tesco said it had only limited knowledge of negotiations with RB over any past cost prices increases for Durex personal lubricants because the relevant staff no longer worked at Tesco. Tesco said it could not offer any further information on any changes to its retail prices for Durex personal lubricants after an increase in the size of Durex personal lubricant bottles.
12. Tesco said RB was currently proposing to [§].
13. [§]
14. [§]
15. Tesco said it would look at how Durex personal lubricants were priced in other retailers when setting its retail prices. [§]
16. [§]
17. Tesco said its own-label personal lubricant represented an entry point into the personal lubricant category and Durex was another brand in the category. Tesco said it only had space for its own-label product, Durex and K-Y Jelly in its stores because of limited shelf space.
18. [§]
19. [§]
20. [§]
21. [§]
22. [§]
23. [§]
24. [§]
25. Tesco said it had not been in any dispute with RB that required arbitration or mediation.
26. Tesco said it was [§] to narrow its range of products in response to any disagreement over prices with suppliers. Tesco said it did have alternatives in its own-label products [§]. Tesco said it would look to negotiate and resolve any disagreement over price with the supplier rather than no longer stock a product.

27. Tesco said it considered stocking other personal lubricant brands but it had limited shelf space so it had selected the brands that it thought customers wanted. Tesco said it did not think it needed, at present, to sell more than Durex, K-Y and its own-label personal lubricant brands to achieve its customers' need states but, in the longer term, it might consider selling other personal lubricant brands, particularly online.
28. Tesco said it could change retail prices within [§] hours. [§]
29. Tesco said it could not speculate on other retailers' response to RB's changes to Durex personal lubricants. Tesco said it took what suppliers said about changes to their products on its own merits and made decisions about these changes based on its own business. Tesco said it set its retail prices based on prices in the wider market.
30. Tesco said it could reconsider its negotiations with RB if it found its prices for personal lubricant products were uncompetitive. [§]

Closeness of competition between own-label personal lubricants and Durex and K-Y

31. [§]
32. Tesco confirmed that its own-label personal lubricants were [§]
33. [§]
34. Tesco said that when it introduced its own-label personal lubricants it had increased the stock keeping units (SKUs) in the category and did not replace any existing SKUs, and through that expanded its category by [§].
35. Tesco said that [§] produced Tesco's own-label personal lubricants. Tesco advised these products were produced in the [§].

Promotions

36. Tesco said that it did not normally run any promotions on its own-label personal lubricants, although some products were reduced to clear.
37. Tesco said that it did not promote K-Y but it did promote Durex.
38. Tesco said that when Durex personal lubricants were promoted [§]. Tesco said that apart from its own-label products, it did not stock any other brands.

Stocking other brands of personal lubricants

39. [☒]
40. [☒]
41. [☒]
42. Tesco said it would be no more difficult for a new supplier of personal lubricants to get its products in Tesco's stores than for a new supplier to get a product listed in any other area.
43. Tesco said that it would stock a new personal lubricant brand if it was convinced that it was a genuine product that would appeal to customers and offer them something new. [☒]
44. Tesco said that marketing would be a factor in deciding about listing any new brand.

Segmentation of personal lubricants

45. Tesco said it did not see vaginal moisturisers as part of the same category as Durex and K-Y personal lubricants.
46. While vaginal moisturisers were placed in the same bay within stores as lubricants, they had more purpose and this is how they were marketed to customers.

Planned purchases versus impulse purchases

47. Tesco said it thought purchases of Durex personal lubricants were both planned and unplanned. Tesco said that when Durex personal lubricants were promoted it saw an uplift in sales, which suggested some unplanned purchases. Tesco said that for K-Y jelly it was likely to be more planned, stable purchases than for Durex.
48. [☒]

Competition between sales channels

49. Tesco said that when setting its prices for personal lubricants it took account of the market to ensure it was competitive. It primarily looked at the prices charged by [☒].

50. Tesco said that it was difficult to know how many consumers were switching from bricks and mortar retailers to online retailers. Tesco said it did not see the development of an online market in personal lubricants [☒].
51. Tesco said that online sales in general were going to become a larger proportion of the overall retailing environment, but it [☒] of personal lubricants.

Counterfactual

52. [☒]

53. [☒]