

## **RECKITT BENCKISER/K-Y BRAND MERGER INQUIRY**

### **Summary of hearing with Pasante on 25 February 2015**

#### **The proposed merger**

1. Pasante said the proposed merger between Durex personal lubricants (owned by Reckitt Benckiser (RB)) and K-Y jelly (owned by Johnson & Johnson (J&J)) in the UK gave rise to some concerns, although it was going to focus on exports of its personal lubricants.
2. Pasante said the merger would have an impact on its business and it was already concerned about RB's behaviour in the UK market for condoms. Pasante said that it had previously raised concerns with the CMA about predatory pricing by RB in the condoms market.

#### **Pasante's personal lubricant business – manufacturing and supply**

3. Pasante said it had started supplying Pasante branded personal lubricants since about 2010, but had manufactured personal lubricants for other brands since 1997.
4. [✂]
5. Pasante said its sales of personal lubricants had increased year on year in the last four years, but its range of products had not increased over that period.
6. Pasante said it was difficult for it to design and launch new personal lubricants because of high costs for research and development. Designing a new personal lubricants required skin testing and obtaining CE marking, which could cost hundreds of thousands of pounds. Pasante said that it was near impossible for it to launch its own personal lubricants because of these costs, and it was therefore tied into using other companies' formulations for personal lubricants and their CE marks.
7. [✂]
8. Pasante said it expected its worldwide turnover to increase over the next three years, but its UK turnover to decrease. Pasante said that it thought its UK turnover would decrease because RB would be focusing on the UK lubricant market following the merger so there would be little opportunity for

Pasante in this market. Pasante said it was therefore going to focus on exports.

9. Pasante said it manufactured condoms, personal lubricants and pregnancy testing kits for supply in the UK. Pasante said that it also distributed sexual health products like HIV-testing kits.
10. [REDACTED]
11. Pasante said the manufacturing process for different types of personal lubricants was essentially the same. There was no major differences between the manufacture of vaginal moisturisers and personal lubricants. Pasante said that basically these products were 99% de-ionised water with some chemicals added. The differences in the process simply related to the chemicals added, the length of cooking time and how quickly the product was chilled.
12. Pasante said that it manufactured own-label personal [REDACTED], and it also produced Pasante branded personal lubricants for supply in the UK.

### **Segmentation of personal lubricant products**

13. Pasante said the personal lubricant market was segmented into two sections. One section was medical, with sterile personal lubricants that were used for catheter insertion and other medical procedures. The other section was personal lubricants for sex, which had seen major growth in sales in recent years. Pasante said its view of the personal lubricant market was based on experience in the business rather than any specific research.
14. Pasante said it did not see products labelled 'vaginal moisturisers' as competing with personal lubricants for sex. Pasante said vaginal moisturisers could be seen as medical whereas other personal lubricants were marketed as products for sex. Pasante also said that there were some products marketed as moisturisers that did not have CE marks and were only appropriate for external use. Pasante said that many of these unregulated personal lubricants could be found in sex shops [REDACTED].

### **Competitors**

15. Pasante said its main competitor in personal lubricants was Durex. Pasante said it thought its secondary competitor was Bodywise (manufacturer of Liquid Silk personal lubricant). Pasante said it thought Bodywise had the only dedicated lubricant manufacturing plant in the UK and was in the process of being bought by a very major player.

16. Pasante said K-Y jelly in the UK was positioned as a sterile lubricant, but around the world K-Y was a bigger brand with lots more personal lubricant products. Pasante said it was only a matter of time before RB brought these other personal lubricants into the UK. Pasante said that these other K-Y personal lubricants would be competition to RB's Durex personal lubricants.
17. Pasante said it did not see K-Y jelly as a competitor to its personal lubricants because K-Y jelly was more of a medical device. Pasante said that while many years ago K-Y jelly was seen as the only personal lubricant, other personal lubricants aimed at sex had now taken over the market.
18. Pasante said Durex personal lubricants were its main competitor because Durex was the largest brand. Pasante said that RB was able to advertise Durex personal lubricants on television as a result of profits made from its condom business. Pasante said it could not afford to advertise on television.
19. Pasante said Bodywise personal lubricants were sold in some grocery stores, but not many stores, and were also sold online. [✂]
20. Pasante said it monitored competitors' prices and products, particularly Durex, in the UK market. Pasante employed a brand manager whose job was to monitor Durex's range and ensure it was fairly supplied. Pasante said it did not monitor K-Y, and Pasante was probably more of a competitor to K-Y than vice versa.
21. Pasante said it did not have any research on the closeness of competition between its personal lubricants and other brands. Pasante said its views were based on experience within the industry. Pasante said it had seen K-Y jelly move from being the dominant personal lubricant to it being tucked away on shelves and everyone buying other brands aimed at sexual enhancement. Pasante said the growth of Durex personal lubricants in the UK had done a lot of damage to the K-Y brand.

## **Retail of personal lubricants**

22. Pasante said it supplied its Pasante branded personal lubricants to some independent pharmacies and to Superdrug's Savers chain of stores, but only on promotion. Pasante said it also supplied Pasante branded personal lubricants to some specialist adult retailers and online through Amazon. Pasante said its sales of Pasante branded personal lubricants in the UK were very small.

23. [✂] Pasante said it also sold some sachets of lubricant to the NHS. Pasante said its sales of personal lubricants through independent pharmacies were non-prescription sales.
24. Pasante said that the vast majority of its sales of personal lubricants were bricks-and-mortar sales rather than online sales. Pasante said it estimated its bricks-and-mortar sales to be around 85-90% of its total sales.

### **Negotiations with grocery retailers and pharmacies**

25. Pasante said it was easier to get its personal lubricants stocked in independent pharmacies than in grocery retailers because in grocery retailers it was competing with a major brand, Durex, who paid massive amounts for promotions. By contrast, independent pharmacies stocked many more brands of personal lubricants.
26. Pasante said it had approached grocery retailers to get its personal lubricants listed, but had been turned down by these retailers.
27. Pasante said Tesco had listed Pasante condoms and lubricants some years ago and as a result had run the first condom promotion (a two for one deal) in a grocery retailer. Pasante said that after it ran this promotion in Tesco, Durex ran two for one promotions and out-promoted Pasante, so Tesco then delisted Pasante condoms and personal lubricants. Pasante said that it had been a condition of its supply of personal lubricants to Tesco that it also supplied condoms.
28. [✂]
29. [✂]
30. Pasante said that selling its personal lubricants through supermarkets rather than independent pharmacies would mean lower margins because costs were higher, but on the other hand, volumes of sales would be greater. This made it worthwhile, but Pasante said it was becoming more and more difficult to deal with supermarkets.
31. Pasante said it was possible for suppliers to gain entry in supermarkets with just personal lubricant products rather than condoms and personal lubricants, but it would be impossible to gain a listing unless you had a very big brand name. Pasante said that it, ID (Juicy Lube), and Bodywise had all tried to get personal lubricants listed in supermarkets but none had been successful.
32. Pasante said it was difficult to get listed in supermarkets without brand value, but it was hard to get brand value unless you were listed in supermarkets.

Pasante said it was possible to build popularity for a brand online, but even if you were then listed in supermarkets you could be out-promoted by bigger brands. Pasante said you needed to be a big brand with lots of money to stay listed in supermarkets.

## **Promotions**

33. Pasante said that suppliers would fund promotions of personal lubricants in retailers. Suppliers would prepare proposals for promotions for retailers to consider. Retailers would not fund promotions.

## **Competition between sales channels**

34. Pasante said it did not think consumers switched between buying personal lubricants in supermarkets or pharmacies and buying them online or in adult stores. Pasante said the majority of personal lubricants were bought in supermarkets as part of weekly shops.
35. Pasante said if prices of personal lubricants in grocery stores and pharmacies went up by 5%, customers would look to buy online, but the online market was small and the majority of sales were in supermarkets. Pasante also said customers would have to pay for postage and packing if they bought online so they might not switch if any price increase was relatively small.
36. Pasante said people planned to buy personal lubricants. Buying personal lubricants had become part of a routine for people.

## **Counterfactual**

37. Pasante said it did not think the K-Y product range would have expanded if RB had not bought K-Y globally, but now that RB owned K-Y it could introduce a new range of K-Y personal lubricants so there would be a Durex range and a K-Y range in the UK. Pasante said if RB expanded the range of personal lubricants it would stop other suppliers from entering the market.

## **Margins and returns**

38. [✂]
39. Pasante said this price covered manufacturing costs only, and transport costs were around 6.5% extra.
40. [✂]

41. [✂]
42. Pasante said the decision to supply its own branded personal lubricant or produce an own-label personal lubricant for a retailer was driven by what retailers wanted. [✂].
43. Pasante said if someone wanted to enter the personal lubricants market they would need to find a manufacturer who owned the CE mark, or they would need to obtain their own CE mark, which would require skin testing. It cost around £300,000 for testing. Pasante said it would not advise people to enter the personal lubricants market because there were easier markets to enter.
44. Pasante said it wanted to expand its range of personal lubricants in the UK with a silicone lubricant and a Class III personal lubricant which were prohibited at present. Class III status provided for the personal lubricant to contain benzocaine or lidocaine, which would provide a delay effect. However, testing was so expensive that producing such a product was unaffordable.
45. Pasante said personal lubricants were such a small category that there was only room for one or two brands in the market. Pasante said this meant there was little opportunity for it now, and it could be even harder for Pasante in future if the merger went ahead because RB could extend the K-Y range.