

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

Undertakings given to the Competition and Markets Authority by Johnson & Johnson 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:
 - (a) the anticipated acquisition by the Acquirers of the K-Y business in the UK may be expected to result in the creation of a relevant merger situation;
 - (b) 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;
 - (c) the CMA should take action to remedy the SLC and the adverse effects likely to arise from it;
 - (d) 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
 - (e) 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, among other things, 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) The Vendors give to the CMA the following Undertakings under section 82 of the Act.

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:

'Act' means the Enterprise Act 2002;

'Acquirer(s)' means Reckitt Benckiser Group plc and Reckitt Benckiser (Brands) Limited, their subsidiaries and affiliates;

'Acquirer(s) Undertakings' means the final undertakings offered by the Acquirers and to be accepted by the CMA in relation to the Merger on [...];

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

'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 to the Acquirers' Undertakings and in Appendix 2 to these Undertakings;

'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 to these Undertakings and in Appendix 2 to the Acquirers' Undertakings, and taking effect immediately upon completion of the merger;

'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, together with the Schedules and Exhibits thereto 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;

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

‘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 8 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 and the Vendors at the date of the entry into force of the Interim Undertakings 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;

‘Direction(s)’ means a direction or instruction given to the Acquirers by the CMA pursuant to Part 6 of these Undertakings;

‘Divestiture Period’ means the period beginning on the commencement date of the Acquirers’ 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 to these Undertakings and in Appendix 3 to the Acquirers’ Undertakings;

‘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 of the Acquirers’ Undertakings, 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 as listed in Appendix 1 to these Undertakings and in Appendix 1 to the Acquirers' Undertakings;

'**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 respectively and/or any other Interim Undertakings offered by the Acquirers and the Vendors and to be accepted by the CMA in relation to the Merger;

'**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 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, in accordance with the terms set out in Part 4 and the procedure set out in Part 5 of the Acquirers' Undertakings;

'**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 and in Appendix 2 to the Acquirers' Undertakings;

'**Licensed Operations**' means the assets, rights, Intellectual Property Rights, information, assignments, licences, consents, in and to the K-Y brand, and other operations required to operate the K-Y Business, as listed in Appendix 1 to these Undertakings and in Appendix 1 to the Acquirers' Undertakings, to be licensed to the Approved Licensee under the Approved Licensing Agreement(s);

'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 lubricants under the K-Y brand (inclusive of the K-Y Business) 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;

'Reckitt Benckiser Business' means the business of supplying personal lubricants under the Durex brand by the Acquirers 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;

'Specified Period' means the period beginning on the date of these Undertakings and terminating when the Approved Licensing Agreement(s) has been signed and entered into effect;

'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;

'The Ordinary Course of Business' means matters connected to the day-to-day supply of personal lubricant products by the K-Y Business or the Reckitt Benckiser Business and does not include matters involving significant changes to the organisational structure or related to the post-Merger integration of the business of supplying personal lubricant products under the K-Y brand in the UK and the Reckitt Benckiser Business;

'Transitional Services' means services such as those referred to in Part 4 and Appendix 1 of these Undertakings;

'Trustee' means a person appointed to carry out the Trustee Obligation in accordance with the Acquirers' 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, including these Undertakings;

'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 Vendors undertake that during the Specified Period they will not take any action (inclusive of the exercise of contractual rights and/or obligations and/or the exercise of intellectual property rights) which:
- 3.1.1 completes the Merger, or causes or permits any other integration of the business of supplying 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 of supplying 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 sells or otherwise transfers ownership or control of the business of supplying personal lubricant products under the K-Y brand in the UK to any entity that is not under their direct or indirect control;
 - 3.1.4 impairs the carrying on of the business of supplying personal lubricant products under the K-Y brand in the UK; or
 - 3.1.5 closes, winds down the business of supplying personal lubricant products under the K-Y brand in the UK, 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.
- 3.2 The Vendors undertake to ensure that personal lubricant products are sourced and supplied to enable them to fulfil the undertakings of paragraph 3.1. However, the Vendors are not required to undertake or continue production of any of the Existing SKUs (or any other personal lubricant products) in any manner that is outside or beyond such obligations as the Vendors may have to the Acquirers under the Asset Purchase Agreement(s).
- 3.3 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.
- 3.4 During the Specified Period and until such time as the CMA has granted consent pursuant to paragraph 3.3, the Vendors 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 of supplying personal lubricant products under the K-Y brand in the UK should 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. Additional Undertakings

- 4.1 The Vendors undertake to allow the Acquirers to procure from them the Licensed Operations required for the Approved Licensee to manufacture, market, sell, supply and distribute personal lubricant products in the UK under the K-Y brand.
- 4.2 The Vendors undertake to allow the Acquirers to procure from them all required Transitional Services on the same basis as these would have been provided to the Acquirers under the Asset Purchase Agreement(s).
- 4.3 The Vendors undertake to provide the Trustee, if appointed, 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.
- 4.4 The Vendors recognise and acknowledge that the Trustee, if appointed, 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 Vendors undertake to use all reasonable endeavours to ensure that the Trustee is provided upon request with copies of any such documents and information, all relevant costs to the Vendors associated with meeting this obligation to be reimbursed by the Acquirers.
- 4.5 The Vendors undertake that until the Approved Licensing Agreement(s) has entered into effect they will not take any action (inclusive of the exercise of contractual rights and/or obligations and/or the exercise of intellectual property rights) which:
 - 4.5.1 impedes the taking of any action under the Act which may be justified by the CMA's decisions in the Report;
 - 4.5.2 frustrates compliance with these Undertakings; or

4.5.3 frustrates the Acquirers' compliance with any undertakings offered by them and accepted by the CMA (a non-confidential version of which has been provided to the Vendors) in relation to the Merger.

5. Procedure for consent and notification

5.1 The Vendors 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 Vendors 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 Vendors 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 Vendors discover that an application for consent or approval has been made without full disclosure to the CMA, the Vendors 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 they have 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 The Vendors 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 Vendors 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 In the event that the Vendors are delayed in implementing any requirement of these Undertakings, the Vendors 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 any requirement has not been met.

6. Directions

6.1 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.

6.2 The Vendors shall comply promptly with such written Directions as the CMA may from time to time give:

6.2.1 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

6.2.2 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.

6.3 Any delay by the CMA in making a written Direction shall not affect the obligations of the Vendors at such time as the CMA makes any written Direction under paragraph 6.2.

7. Variations to these Undertakings

7.1 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.

7.2 Where a request for consent is sought pursuant to paragraph 7.1 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.

7.3 The consent of the CMA shall not be unreasonably withheld.

8. Compliance with these Undertakings

8.1 The Vendors shall procure that any member of the same Group of Interconnected Bodies Corporate as the Vendors 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 Vendors shall be attributed to the Vendors for the purposes of these Undertakings.

- 8.2 Where any Affiliate of the Vendors is not a member of the same Group of Interconnected Bodies Corporate as the Vendors, the Vendors shall use their best endeavours to procure any such Affiliate shall comply with these Undertakings as if it had given them.
- 8.3 The Vendors will confirm to the CMA, on the last working day of each month and until the obligations of these Undertakings expire in accordance with Part 14, in the form set out in Appendix 4, compliance with these Undertakings.
- 8.4 Notwithstanding paragraph 8.3 above, the Vendors shall actively keep the CMA informed of any developments relating to the business of supplying personal lubricant products under the K-Y brand in the UK, which includes but is not limited to promptly notifying the CMA within five working days of:
- 8.4.1 any refusal to supply customers in the UK outside the ordinary course of business;
- 8.4.2 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
- 8.4.3 any substantial changes in the businesses of supplying personal lubricant products under the K-Y brand UK contractual arrangements or relationships with key suppliers.
- 8.5 If the Vendors have any reason to suspect that these Undertakings might have been breached they shall immediately notify the CMA.

9. General obligation to provide information to the CMA

- 9.1 The Vendors 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 the Undertakings or under sections 82, 83, 92, and 94(6) of the Act.
- 9.2 The Vendors undertake to indicate to the Trustee what information provided to it should be treated as confidential and the Trustee shall not disclose any business-sensitive information of the Vendors to any person other than to the CMA, without the prior written consent of both the CMA and the Vendors.

10. Service

- 10.1 The Vendors hereby authorise Weil Gotshal & Manges LLP whose address for service is 110 Fetter Lane, London EC4A to accept on behalf of the Vendors 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 Vendors or any of their Subsidiaries in connection with any proceedings in courts in the United Kingdom).
- 10.2 Any document, order, request, notification or other communication connected with these Undertakings shall be deemed to have been validly served on the Vendors if it is served on Weil Gotshal & Manges LLP at its registered office (Reference: CMA Undertakings, attention: Douglas Nave) and service or receipt shall be deemed to be acknowledged by such Vendors' company if it is acknowledged by a receptionist or mail room employee of Weil Gotshal & Manges LLP.
- 10.3 Paragraph 10.2 has effect irrespective of whether, as between Weil Gotshal & Manges LLP and the Vendors, Weil Gotshal & Manges LLP has or continues to have any authority to accept and acknowledge service on behalf of the Vendors, and no failure or mistake by the Vendors (including a failure to notify the Vendors 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.

11. Effect of invalidity

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

12. Extension of time

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

13. Governing law

- 13.1 These Undertakings shall be governed by and construed in all respects in accordance with English Law.
- 13.2 Disputes arising concerning these Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

14. Termination and release

- 14.1 These Undertakings shall remain in force until the obligations of these Undertakings expire unless these Undertakings are varied, released or superseded prior to that date.
- 14.2 The Vendors 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.
- 14.3 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 THE VENDORS JOHNSON & JOHNSON, MCNEIL-PPC INC, THEIR AFFILIATES AND THEIR SUBSIDIARIES

Signature

Name

Title

Date

The Acquirer(s)' Licensed Operations

The Licensed Operations will include the assets, rights, Intellectual Property Rights, information, assignments, contracts, inventory, licences, 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 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

This appendix mirrors Appendix 2 of the Acquirers' Undertakings.

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

This Appendix mirrors Appendix 3 of the Acquirers' Undertakings.

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 the Vendors Johnson & Johnson, McNeil-PPC Inc., their affiliates and their subsidiaries

I [insert name] confirm on behalf of Johnson & Johnson, McNeil-PPC Inc. and their respective affiliates and subsidiaries (the Vendors) that in the period from [insert date] to [insert date] (the Relevant Period) and subject to any matters reported under paragraphs 6 and 7 below:

1. The Vendors and any member of the same Group of Interconnected Bodies Corporate have complied during the Relevant Period with all these Undertakings given by them and accepted by the CMA on [date];
2. The Vendors confirm that no breach or potential breach of any of these Undertakings has occurred during the Relevant Period;
3. Subject to Part 3 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 the Vendors, which:
 - (a) completed the Merger, or caused or permitted any other integration of the business of supplying personal lubricant products under the K-Y brand in the UK, which is operated by the Vendors as at the Commencement Date, with the Reckitt Benckiser Business;
 - (b) impaired the ability of the business of supplying 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;
 - (c) sold or otherwise transferred ownership or control of the business of supplying personal lubricant products under the K-Y brand in the UK to any entity that was not under their direct or indirect control;
 - (d) impaired the carrying on of the business of supplying personal lubricant products under the K-Y brand in the UK;
 - (e) closed, wound down the business of supplying personal lubricant products under the K-Y brand in the UK, or otherwise terminated/refused the supply of K-Y branded personal 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;

4. Subject to Part 4 of these Undertakings and until the Approved Licensing Agreement has entered into effect no action (inclusive of the exercise of contractual rights/ obligations and/or the exercise of intellectual property rights) has been taken by the Vendors, which:
 - (i) impeded the taking of any action under the Act which may be justified by the CMA's decisions in the Report;
 - (ii) frustrated compliance with these Undertakings; or
 - (iii) frustrated the Acquirers' compliance with any undertakings offered by them and accepted by the CMA.

5. The Vendors remain in full compliance with these Undertakings and will continue to actively keep the CMA informed of developments relating to the business of supplying personal lubricant products under the K-Y brand in the UK in accordance with paragraph 8.4 of these Undertakings.

Non-compliance

6. Details of any incidences of non-compliance, breaches or potential breaches that have occurred during the Relevant Period, as notified to the CMA pursuant to Part 5 and Part 8 of these Undertakings, and of the particular Parts of the aforementioned Undertakings that have been breached;

7. Steps taken to deal with the incidences and breaches described in paragraph 6 of the Compliance Statement.

Interpretation

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

FOR AND ON BEHALF OF THE VENDORS JOHNSON & JOHNSON, MCNEIL-PPC INC., THEIR AFFILIATES AND THEIR SUBSIDIARIES

Signature

Name

Title

Date