

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT**

*In the Matter of The Procter & Gamble Company and The Gillette Company,
File No. 051-0115*

I. Introduction

The Procter & Gamble Company (“P&G”) and The Gillette Company (“Gillette”) are both leading suppliers of consumer products worldwide. P&G proposes to acquire Gillette. The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from P&G and Gillette. The purpose of the Consent Agreement is to remedy the anticompetitive effects that would otherwise result from P&G’s proposed acquisition. Under the terms of the Consent Agreement, the parties will be required to divest: (1) Gillette’s Rembrandt® at-home teeth whitening business; (2) P&G’s Crest® SpinBrush™ battery-powered and rechargeable toothbrush business; and (3) Gillette’s Right Guard® men’s antiperspirant/deodorant (“AP/DO”) business. In addition, P&G is required to amend its joint venture agreement with Philips Oral Healthcare, Inc. (“Philips”) regarding the Crest® Sonicare® IntelliClean System (“IntelliClean”) rechargeable toothbrush.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested people. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an Agreement and Plan of Merger dated January 27, 2005, P&G proposes to acquire 100 percent of the voting securities of Gillette in a transaction valued at approximately \$57 billion (“Proposed Acquisition”). The Commission’s Complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the United States markets for the research, development, manufacture, distribution, and sale of at-home teeth whitening products, adult battery-powered toothbrushes, rechargeable toothbrushes, and men’s AP/DOs.

Consistent with the well-established approach to merger analysis, we have determined the appropriate product markets in which to analyze the likely competitive effects of the proposed merger. Staff initially examined whether the combination of the two companies’ broad array of consumer products would be likely to have anticompetitive effects, including not only increased prices in the short term but also the creation of entry barriers that could affect price and innovation in the long term. In past cases, the Commission has found that the combination of products from two companies can create entry barriers that affect price and innovation in the long term. In past cases, the Commission has found that the combination of products from two companies can create entry barriers that affect price and innovation in the long term. In past cases, the Commission has found that the combination of products from two companies can create entry barriers that affect price and innovation in the long term.

The investigation has disclosed, however, that most retailers do not look at broad categories, like oral care and AP/DO, when they decide which products to stock and sell. They generally make decisions on individual products (e.g., men's AP/DO), that are perceived to be close substitutes within these broad categories. One supplier may be preferred for an individual product even though another supplier is preferred for other products in the broad category. Moreover, most retailers are likely to employ different category captains to assist them on a product-by-product basis within the broad categories. We have therefore concluded that the loss of competition between the merging parties in broad categories is unlikely to cause competitive harm. The Commission has sought and obtained relief in these relevant markets.

II. The Parties

Headquartered in Cincinnati, Ohio, P&G is one of the largest and most diversified suppliers of consumer products in the world. In 2004, P&G had worldwide net sales of approximately \$51.4 billion. With its Crest® line of products, P&G is one of the leading suppliers of oral care products in the United States. The Crest family of products includes the Crest® Whitestrips™ and Crest® Night Effects™ lines of at-home teeth whitening products and the Crest® SpinBrush™ line of battery-powered toothbrushes. P&G is also a leading supplier of men's AP/DOs under its Old Spice® brand.

Gillette, based in Boston, Massachusetts, is also one of the world's leading suppliers of consumer products. Gillette had total worldwide net sales of approximately \$10.5 billion in its 2004 fiscal year. Like P&G, Gillette is one of the leading suppliers of oral care products in the United States with its Oral-B® and Oral-B® Braun® line of manual, battery-powered, and rechargeable toothbrushes, and its Oral-B® Rembrandt® and Rembrandt® line of at-home teeth whitening products. Gillette is also a leading supplier of men's AP/DOs unde

suppliers of branded strips. P&G is the market leader with its Crest Whitestrips® and Crest Night Effects® products, while Gillette is the second leading supplier with its Oral-B® Rembrandt® and Rembrandt® products. Together, the parties account for over 80% of the sales in this market.

The Proposed Acquisition would significantly increase concentration in the United States market for at-home teeth whitening products, leaving P&G as the dominant supplier. By eliminating competition between the two leading suppliers, the Proposed Acquisition would likely result in higher prices, reduced innovation, and fewer product choices for consumers in this market.

IV. Adult Battery-Powered Toothbrushes

A second relevant product market in which to assess the competitive effects of the Proposed Acquisition is the United States market for adult battery-powered toothbrushes. Adult battery-powered toothbrushes are usually powered by AA or AAA batteries and either have oscillating or pulsating brush heads. The majority of adult battery-powered toothbrushes are sold at retail for between \$5 and \$8, and the batteries and brush heads can be replaced on some, but not all, products. Adult battery-powered toothbrushes are typically marketed as upgrades over manual toothbrushes and are more affordable than sophisticated rechargeable toothbrushes.

The United States market for adult battery-powered toothbrushes is highly concentrated. P&G and Gillette are the two largest suppliers in this market. P&G markets its adult battery-powered products under the Crest® SpinBrush™ brand name, while Gillette sells its adult battery-powered products under the Oral-B® brand name. Gillette also dominates the adult high-priced manual and low-priced rechargeable toothbrush segments, which are the segments most likely to capture any switching away from adult battery-powered toothbrushes in the face of a price increase. Together, the parties account for over 85% of the sales in the United States adult battery-powered toothbrush market.

The Proposed Acquisition would significantly increase concentration in the United States market for adult battery-powered toothbrush products, leaving P&G as the dominant supplier. By eliminating competition between the two leading suppliers, the Proposed Acquisition would likely result in higher prices, reduced innovation, and fewer product choices for consumers in this market.

V. Rechargeable Toothbrushes

A third relevant product market in which to assess the competitive effect Proposed

competitive operations until the businesses are transferred to Commission-approved acquirers.² The Commission has approved Edward Gold of PricewaterhouseCoopers as the Interim Monitor pursuant to the Consent Agreement to ensure that P&G and Gillette comply with the provisions of the Order.

There are also several provisions of the Consent Agreement designed to ensure the success of the divestiture of the Crest SpinBrush business to Church & Dwight. First, the Consent Agreement requires P&G to divest its rights and assets relating to adult battery-powered

² The Order to Maintain Assets also requires that P&G and Gillette maintain the viability of the Soft & Dri and Dry Idea businesses.