

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Robert Pitofsky, Chairman
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

In the Matter of

RECKITT & COLMAN plc,
a corporation.

DOCKET NO. C-3918

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by Reckitt & Colman of 100 percent of the voting securities of Benckiser NV, and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of 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; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order:

1. Respondent Reckitt & Colman plc is a public limited company organized, existing and doing business under and by virtue of the laws of England, with its office and principal place of business at 67 Alma Road, Windsor, Berkshire SL4 3HD, United Kingdom.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Respondent" or "Reckitt & Colman" means Reckitt & Colman plc, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Reckitt & Colman plc, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Vermögensverwaltung" means NRV Vermögensverwaltung, a corporation organized, existing, and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Ludwig-Bertram Strasse 8+10, 67059 Ludwigshafen, Germany.
- C. "Benckiser" means Benckiser N.V., a subsidiary controlled by Vermögensverwaltung, which is organized, existing, and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at World Trade Center, Amsterdam Airport, Tower C, Schipholboulevard 229, 1118 BH Schiphol Airport, The Netherlands, and includes, but is not limited to, Benckiser's wholly-owned subsidiary, Benckiser Consumer Products Inc., a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at Greenwich American Centre, 5 American Lane, Greenwich, Connecticut 06831-2513.
- D. "Church & Dwight" means Church & Dwight Co., Inc., a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 469 North Harrison Street, Princeton, New Jersey 08543-5297.
- E. "Commission" means the Federal Trade Commission.
- F. "Acquisition" means the acquisition of Benckiser by Reckitt & Colman pursuant to a Merger Agreement dated July 27, 1999.

- G. "Acquirer" means either Church & Dwight, if Respondent divests pursuant to Paragraph II.A.1. of this Order, or such other entity to whom Respondent divests the Divested Assets pursuant to any other provision of this Order.
- H. "Hard Surface Bathroom Cleaners" means products specially formulated, marketed, and used by consumers to remove built-up soils and stains from bathroom surfaces.
- I. "Fine Fabric Wash Products" means products specially formulated, marketed, and used by consumers to safely clean fine fabrics such as silks, woolens or other delicate fabrics.
- J. "Divested Assets" means all of Respondent's rights, title, and interest, acquired from Vermögensverwaltung pursuant to the Acquisition, in assets and businesses relating to the research, development, manufacture, sale, and distribution of Hard Surface Bathroom Cleaners and Fine Fabric Wash Products (collectively the "Divested Products"), including, without limitation, the following:
1. the trade dress, brand and trademark, "Scrub Free," and associated goodwill;
 2. the trade dress, brand and trademark, "Delicare," and associated goodwill;
 3. all inventory, customer lists, vendor lists, supplier contact lists, price lists, catalogs, sales and promotion plans, materials and literature, advertising materials, cost and pricing information, marketing plans, information and materials, product development information, research materials, technical information, claims support, product liability claim files, business plans (including, but not limited to, actual plans currently in force for the top 20 accounts), trade secrets, technology, technical know-how, formulae, manufacturing processes, recipes, blue prints, research records, specifications, packaging designs (including product labels), artwork, drawings, and process and quality control data;
 4. intellectual property rights (including, but not limited to, an assignment of all rights under a Patent and Know-How License Agreement (July 1, 1987) between Ecolab, Inc., and Joh. A. Benckiser GmbH, and the First Amendment to the Patent and Know-How Agreement (November 4, 1999) between Benckiser N.V. and Ecolab, Inc.), copyrights, trademarks, trade dress, trade names, and Universal Product Code Product Identifier Codes (but excluding Universal Product Code Company Identifier Codes);
 5. all rights, title and interest in and to the contracts entered into in the ordinary course of business with customers, retailers of Divested Products (including, but not limited to, letters of confirmation of trade promotions and slotting letters), suppliers, sales representatives, brokers, licensees, or any other person;

6. all rights under warranties and guarantees, express or implied;
 7. all books, records, files, and supporting documents; and,
 8. all Environmental Protection Agency applications, registrations, permits, and the like, and all documents related thereto.
- K. "Divestiture Agreement" means each and all of the following:
1. the agreement for the sale of the Divested Assets to Church & Dwight dated October 12, 1999, as amended by the First Amendment to the Asset Purchase Agreement (November 5, 1999);
 2. the Trademark Purchase Agreement between Benckiser and Church & Dwight dated October 12, 1999;
 3. the Transitional Services Agreement between Benckiser and Church & Dwight dated October 21, 1999; and,
 4. the Assignment and Assumption Agreement between Benckiser and Church & Dwight.
- L. "New Divestiture Agreement" means all agreements for the sale of the Divested Assets other than the Divestiture Agreement, and includes any divestiture agreements entered into by a trustee pursuant to Paragraph III of this Order.
- M. "Cost" means direct cash cost of raw materials, packaging and labor.
- N. "Non-Public Acquirer Information" means any information not in the public domain obtained by Respondent directly or indirectly from the Acquirer in the course of negotiation or performance of the Divestiture Agreement or the New Divestiture Agreement. Non-Public Acquirer Information shall not include information that falls within the public domain through no violation of this Order by Respondent.

II.**IT IS FURTHER ORDERED** that:

- A. 1. Respondent shall divest, absolutely and in good faith, the Divested Assets to Church & Dwight pursuant to the Divestiture Agreement (which agreement shall not be read to vary or contradict the terms of this Order), subsequently to the date upon which the Commission accepts the Consent Agreement for public comment, but on or before the date that Respondent consummates the Acquisition.
2. *Provided, however,* that if Respondent divests pursuant to Paragraph II.A.1., Respondent need divest only (a) such Divested Assets that are identified in Paragraph I.J.1. through I.J.8., and (b) such assets that are included in the Divestiture Agreement.
- B. *Provided, however,* that if the Commission determines to make the Order final, but notifies the Respondent either that Church & Dwight is not an acceptable acquirer, or that the Divestiture Agreement is not an acceptable manner of divestiture, then Respondent shall rescind the Divestiture Agreement and rescind any divestiture to Church & Dwight, and Respondent shall divest the Divested Assets, absolutely and in good faith, and at no minimum price, pursuant to a New Divestiture Agreement within ninety (90) days of the date the Order becomes final to an Acquirer or Acquirers that receive the prior approval of the Commission and in a manner that receives the prior approval of the Commission.
- C. Any New Divestiture Agreement shall require Respondent to:
1. Indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses arising from any manufacture or sale of the Hard Surface Bathroom Cleaners and/or Fine Fabric Wash Products supplied to the Acquirer by Respondent pursuant to the New Divestiture Agreement; *provided, however,* that the obligations of this Paragraph II.C.1. may be contingent upon the Acquirer's giving Respondent prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting Respondent to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel; *and provided further* that the obligations of this Paragraph II.C.1. may not require Respondent to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondent to the Acquirer;
2. Make available to the Acquirer, upon reasonable notice and request by the Acquirer, for a period not to exceed eighteen (18) months from the date

Respondent begins delivery of products pursuant the New Divestiture Agreement, all records kept in the normal course of business that relate to the Cost of manufacturing or supplying the Hard Surface Bathroom Cleaners and Fine Fabric Wash Products;

3. Make available to the Acquirer, upon reasonable notice and request by the Acquirer, for a period not to exceed eighteen (18) months from the date Respondent first provides assistance, personnel, or training to the Acquirer pursuant to the New Divestiture Agreement, all records kept in the normal course of business that relate to the Cost of providing such assistance, personnel, or training to the Acquirer.
- D. If Respondent or a trustee divests pursuant to Paragraph II.B. or Paragraph III. of this Order, Respondent shall, at the option of the Acquirer, enter into a contract:
1. To supply and deliver to the Acquirer in a timely manner and under reasonable terms and conditions, up to a twelve (12) month supply of any and all of the Hard Surface Bathroom Cleaners and Fine Fabric Wash Products at Cost, in such quantities as the Acquirer may request up to 110% of Benckiser's 1999 or 2000 production forecast, whichever is greater;
 2. To assign or otherwise convey to the Acquirer all of Respondent's right, title, and interest in any contract with any person relating to research, development, manufacture, marketing, sale, brokerage, or distribution of Hard Surface Bathroom Cleaners and/or Fine Fabric Wash Products; *provided that* if such assignment or conveyance may not be made or be made effective without the consent of any person, Respondent shall use its best efforts to obtain all necessary consents from such person and, failing such consent, shall enter into an agreement with the Acquirer to provide to the Acquirer all the benefits flowing to Respondent pursuant to such contract;
 3. To provide to the Acquirer, at Cost, for a period not to exceed six (6) months from the date of consummation of the New Divestiture Agreement, such assistance, personnel and training as requested by the Acquirer (including its agents and contractors) relating to:
 - (a) the research, development, manufacture, sale, and distribution of the Hard Surface Bathroom Cleaners and/or Fine Fabric Wash Products; and
 - (b) any Environmental Protection Agency applications, registrations, procedures, proceedings, or approvals related to the research, development, manufacture, sale and distribution of Hard Surface Bathroom Cleaners and Fine Fabric Wash Products in the United States;

4. To sell any capital equipment, fixtures, machines, buildings, structures, vehicles, real property, or other tangible assets (other than books and records) used in the research, development, manufacture, sale, or distribution of the Divested Products;

provided, however, that with respect to the assets that are to be divested and the contracts that are to be entered into pursuant to this Paragraph II.D. at the option of the Acquirer or Acquirers, Respondent need not divest such assets or enter into such contracts only if the Acquirer or Acquirers choose not to acquire such assets or enter such contracts and the Commission approves the divestiture without such assets or contracts.

- E. Respondent shall comply with the terms of the Divestiture Agreement (if Respondent divests pursuant to Paragraph II.A. of this Order) or the New Divestiture Agreement (if Respondent, or a trustee, divests pursuant to Paragraph II.B. or Paragraph III. of this Order), which terms are incorporated by reference into this Order, and made a part hereof. Any failure by Respondent to comply with the Divestiture Agreement or the New Divestiture Agreement shall constitute a failure to comply with this Order.
- F. The purpose of the divestiture of the Divested Assets is to ensure the continued use of the Divested Assets in the same businesses in which the Divested Assets are engaged at the time of the Acquisition, and to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.
- G. Respondent shall not provide, disclose or otherwise make available to any of its employees any Non-Public Acquirer Information, nor shall Respondent use any Non-Public Acquirer Information obtained or derived by Respondent in connection with the negotiation or performance of either the Divestiture Agreement or New Divestiture Agreement; *provided, however,* that Respondent may provide, disclose, or otherwise make available Non-Public Acquirer Information to its employees whose duties include negotiating, or performing Respondent's obligations under, the Divestiture Agreement or New Divestiture Agreement, and Respondent may use Non-Public Acquirer Information in connection with negotiating or performing the Divestiture Agreement or New Divestiture Agreement.
- H. Pending divestiture of the Divested Assets, Respondent shall take such actions as are necessary to maintain the viability, marketability and competitiveness of the Divested Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divested Assets.

III.

IT IS FURTHER ORDERED that:

- A. If Respondent fails to divest absolutely and in good faith the Divested Assets pursuant to Paragraph II. of this Order, the Commission may appoint a trustee to divest the Divested Assets. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.
- B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.
 2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to accomplish the divestiture described in Paragraph III.A. of the Order.
 3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, and in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order and to execute a New Divestiture Agreement on behalf of Respondent.
 4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3. to accomplish the divestiture, which shall be to an Acquirer or Acquirers who receive the prior approval of the Commission, and in a manner and pursuant to a New Divestiture Agreement that receive the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan for divestiture, or believes that the divestiture required by this Order can be achieved within a reasonable time, then the divestiture period may be extended by the Commission, or, in the

case of a court-appointed trustee, by the court; *provided, however*, the Commission may extend the trustee's period for divestiture only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Divested Assets or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in any divestiture caused by Respondent shall extend the time for that divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in a manner consistent with the terms of this Order; *provided, however*, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.
7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent, and at reasonable fees, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's accomplishing the divestiture required by Paragraph III.A. of this Order.
8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or

defense of, any claim whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in this Paragraph.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be reasonably necessary or appropriate to accomplish the divestiture required by this Order.
11. The trustee may divest such additional ancillary assets related to the Divested Assets and effect such ancillary arrangements as are necessary to satisfy the requirements or purposes of this Order.
12. The trustee shall have no obligation or authority to operate or maintain the Divested Assets.
13. The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture required by this Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Respondent has completed the divestiture of the Divested Assets and every ninety (90) days thereafter until Respondent has fully complied with the provisions of Paragraphs II. and III. of this Order, Respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the requirements of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal documents (except privileged documents), and all reports and recommendations, concerning the divestiture.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this order shall terminate five (5) years after the divestiture required in Paragraph II.A. of this order has been accomplished.

By the Commission, Commissioner Leary recused.

Donald S. Clark
Secretary

SEAL:

ISSUED: January 18, 2000