

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

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

In the Matter of)
THE PROCTER & GAMBLE)
COMPANY, a corporation;)
and) Docket No. C-4151
and THE GILLETTE COMPANY,)
a corporation.)

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent The Procter & Gamble Company (“Procter & Gamble”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent The Gillette Company (“Gillette”), a corporation subject to the jurisdiction of the Commission, in violation 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 it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT PROCTER & GAMBLE

1. Respondent Procter & Gamble is a corporation organized, existing and doing business under the laws of Ohio with its office and principal place of business located at One Procter & Gamble Plaza, Cincinnati, Ohio, 45202.

2. Respondent Procter & Gamble, among other things, is engaged in the research, development, manufacture, distribution, and sale of consumer products, including at-home teeth whitening products, adult battery-powered toothbrushes, and men's antiperspirants/deodorants.

3. Respondent Procter & Gamble had worldwide net sales of approximately \$51.4 billion in its 2004 fiscal year.

4. Respondent Procter & Gamble is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. §12, and is a corporation whose business is in or affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. RESPONDENT GILLETTE

5. Respondent Gillette is a corporation organized, existing, and doing business under the laws of Delaware with its office and principal place of business located at the Prudential Tower Building, Suite 4800, Boston, Massachusetts, 02199.

6. Respondent Gillette, among other things, is engaged in the research, development, manufacture, distribution, and sale of consumer products, including at-home teeth whitening products, adult battery-powered toothbrushes, rechargeable toothbrushes, and antiperspirants/deodorants.

7. Respondent Gillette had worldwide net sales of approximately \$10.5 billion in its 2004 fiscal year.

8. Respondent Gillette is, and at all times herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

9. Pursuant to an Agreement and Plan of Merger dated January 27, 2005, Respondent Procter & Gamble proposed to acquire 100 percent of the voting securities of Respondent Gillette for approximately \$57 billion (the "Acquisition").

IV. THE RELEVANT MARKETS

10. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the research, development, manufacture, distribution, and sale of: (a) at-home teeth whitening products; (b) adult-battery powered toothbrushes; (c) rechargeable toothbrushes; and (d) men's antiperspirants/deodorants.

11. At-home teeth whitening products whiten teeth by bleaching them with either hydrogen or carbamide peroxide. These products are typically sold over-the-counter through food, drug, club, and mass merchandise channels and are marketed to be used by consumers at home. There are several different types of at-home teeth whitening products, including whitestrips, gels, pens and sticks. Whitestrips and gel products account for the vast majority of sales of at-home teeth whitening products in the United States.

12. 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 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, while at the same time more affordable than sophisticated rechargeable toothbrushes.

13. Rechargeable toothbrushes contain a rechargeable battery that powers high-speed oscillating, pulsating, or vibrating brush heads. They have a separate recharging unit that needs to be plugged into an electrical outlet to recharge the battery contained in the toothbrush. Brush heads for these products are almost always replaceable. Rechargeable toothbrushes typically range in price from \$20 to \$150, and are marketed as the premium brushing option for consumers.

14. Antiperspirants/deodorants are applied under the arms to enhance personal hygiene, and are typically combined together for complete under-arm protection. Antiperspirants/deodorants are sold to specific gender-based segments in various forms, including roll-ons, traditional solids, invisible solids, gels, and aerosols. Men's antiperspirants/deodorants are unique in, among other things, their branding, packaging, fragrances, marketing, strength, and location on the shelf.

15. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in each of the relevant lines of commerce.

V. THE STRUCTURE OF THE RELEVANT MARKETS

16. The relevant market for the manufacture, distribution, and sale of at-home teeth whitening products in the United States is highly concentrated whether measured by the Herfindahl-Hirschman Index ("HHI") or two- or four-firm concentration ratios. Respondents Procter & Gamble and Gillette are the two largest suppliers of at-home teeth whitening products in the United States and are the only significant suppliers of branded at-home teeth whitening strips. Procter & Gamble 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, they account for over 80% of the sales in this highly concentrated market. Accordingly, the Acquisition would significantly increase the concentration level in the United States market for at-home teeth whitening products, leaving

Procter & Gamble as the dominant supplier. Respondents are actual competitors in this relevant market.

17. The relevant market for the research, development, manufacture, distribution, and sale of adult battery-powered toothbrushes in the United States is highly concentrated whether measured by HHI or two- or four-firm concentration ratios. Respondents Procter & Gamble and Gillette are the two largest suppliers of adult battery-powered toothbrushes in the United States. Procter & Gamble 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. Together, Respondents account for over 85% of this highly concentrated market. Accordingly, the Acquisition would significantly increase the concentration level in the United States market for adult battery-powered toothbrushes, leaving Procter & Gamble as the dominant supplier. Respondents are actual competitors in this relevant market.

18. The relevant market for the research, development, manufacture, distribution, and sale of rechargeable toothbrushes in the United States is highly concentrated whether measured by HHI or two- or four-firm concentration ratios. Respondent Gillette and Philips Oral Health Care, Inc. (“Philips”) are the only significant suppliers of rechargeable toothbrushes in the United States. Gillette markets a full line of rechargeable toothbrush products (*i.e.*, low-end to high-end) under the Oral-B® Braun® brand name, while Philips sells mostly mid to high-end products under the Philips® Sonicare® brand name. Respondent Procter & Gamble and Philips are joint venture partners in the development and marketing of the Crest® Sonicare® IntelliClean System (“IntelliClean”), the first integrated toothbrush/dentifrice product (*i.e.*, toothbrush that self dispenses toothpaste) sold in the United States. Pursuant to the Acquisition, Respondent Procter & Gamble would acquire the only significant competitor to its joint venture partner, Philips.

19. The relevant market for the research, development, manufacture, distribution, and sale of men’s antiperspirants/deodorants in the United States is highly concentrated whether measured by the HHI or two- or four-firm concentration ratios. Respondents are the two largest suppliers of men’s antiperspirants/deodorants in the United States. Procter & Gamble markets its men’s antiperspirants/deodorants under the Old Spice® brand name, while Gillette sells its products under the Right Guard® and Gillette Series® brand names. Together, Respondents account for over 50% of the sales in this highly concentrated market. Accordingly, the Acquisition would significantly increase the concentration level in the United States market for men’s antiperspirants/deodorants, leaving Procter & Gamble as the dominant supplier. Respondents are actual competitors in this relevant market.

VI. ENTRY CONDITIONS

20. Entry into any relevant line of commerce would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition set forth in Paragraph 21 below. Entry into any of these markets would require the investment of extremely high sunk costs to, among other things, develop products, establish a brand name, and provide promotional

funding and advertising to support the product(s), which would be difficult to justify given the market structure in the affected markets. Additionally, patents and other intellectual property create significant barriers to entry in the at-home teeth whitening, adult battery-powered, and rechargeable toothbrush markets. Even if a new entrant were willing to take on such investments, it would also face the difficult task of convincing retailers to carry its products. As a result, new entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

VII. EFFECTS OF THE ACQUISITION

21. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between Respondents Procter & Gamble and Gillette for the research, development, manufacture, distribution, and sale of at-home teeth whitening products, adult battery-powered toothbrushes, and men's antiperspirants/deodorants in the United States;
- b. by reducing the merged entity's incentives to adequately support and promote the IntelliClean product and joint venture;
- c. by increasing the ability of the merged entity to unilaterally raise prices of at-home teeth whitening products, adult battery-powered toothbrushes, and men's antiperspirants/deodorants in the United States; and
- d. by reducing the merged entity's incentives to improve service or product quality for at-home teeth whitening products, adult battery-powered toothbrushes, rechargeable toothbrushes, and men's antiperspirants/deodorants in the United States.

VII. VIOLATIONS CHARGED

22. The Acquisition described in Paragraph 9 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

23. The Acquisition described in Paragraph 9, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-ninth day of September, 2005, issues its Complaint against said Respondent.

By the Commission, Chairman Majoras and Commissioner Harbour recused.

Donald S. Clark
Secretary

SEAL: