

Statement of Preliminary Issues

Kimberly-Clark / Kenvue

3 March 2026

Introduction

1. On 27 February 2026, the Commerce Commission registered an application (the Application) from Kimberly-Clark Corporation (together with its subsidiaries, Kimberly-Clark or the Applicant) seeking clearance for it (or a wholly-owned subsidiary) to acquire 100% of the shares in Kenvue Inc. (together with its subsidiaries, Kenvue or the Target) (the Proposed Acquisition).¹
2. As required by the Commerce Act 1986 (the Act), we assess mergers and acquisitions using the substantial lessening of competition test, which we describe further below.
3. The Commission will only give clearance if it is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
4. This statement of preliminary issues (SoPI) sets out the competition issues that we have identified to date and will consider during our investigation, and that we currently consider to be important in deciding whether or not to grant clearance.² Our investigation into the Proposed Acquisition is at an early stage and this SoPI is based primarily on the material provided by the parties in connection with the Application. Other issues may become apparent as we progress our investigation.
5. Through publishing this SoPI, we aim to:³
 - 5.1 increase the transparency of our process;
 - 5.2 provide interested parties with an opportunity to identify any further competition issues which they consider we should investigate and also to consider and submit on the matters identified; and
 - 5.3 gather further information which might assist our investigation.

¹ A public version of the Application is available on the [case register](#) on our website.

² The issues set out in this statement are based on the information available when it was published and may change as our investigation progresses. The issues in this statement are not binding on us.

³ Commerce Commission, *Mergers and Acquisitions Guidelines* (May 2022) at [6.105]. Available on our website at www.comcom.govt.nz.

6. We invite interested parties to provide comments on the likely competitive effects of the Proposed Acquisition. We request that parties who wish to make a submission do so by **17 March 2026**.
7. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

The parties

8. Kimberly-Clark and Kenvue (together, the Parties) overlap in the production and supply of feminine hygiene products, principally sanitary pads (or towels), tampons and panty liners.⁴ These products are used to absorb or collect menstrual blood.⁵

The Applicant – Kimberly-Clark

9. Kimberly-Clark is a global company that is headquartered in the United States. It has several brands split across five product categories:⁶
 - 9.1 baby and childcare;
 - 9.2 adult care;
 - 9.3 feminine care;
 - 9.4 family care; and
 - 9.5 professional.
10. Relevant to the Proposed Acquisition, in New Zealand Kimberly-Clark supplies the U by Kotex brand of feminine hygiene products, which includes sanitary pads (or towels), tampons, panty liners and reusable period underwear.⁷

The Target – Kenvue

11. Kenvue is also a global company that is headquartered in the United States. It is active in the manufacture and supply of consumer health products in the following categories:⁸
 - 11.1 self-care;
 - 11.2 skin health and beauty; and
 - 11.3 essential health.

⁴ The Application at [1.3].

⁵ The Application at [4.4].

⁶ The Application at [2.6].

⁷ The Application at Figure 1.

⁸ The Application at [2.16].

12. Relevant to the Proposed Acquisition, in New Zealand Kenvue supplies the Stayfree and Carefree brands of feminine hygiene products, which includes sanitary pads (or towels), panty liners and tampons.⁹

Our framework

13. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.¹⁰ As required by the Act, we assess mergers and acquisitions using the substantial lessening of competition test.
14. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).¹¹ This allows us to assess the degree by which the Proposed Acquisition might lessen competition.
15. If the lessening of competition as a result of the Proposed Acquisition is likely to be substantial, we will not give clearance. When making that assessment, we consider, among other matters:
- 15.1 constraint from existing competitors – the extent to which current competitors compete and the degree to which they would expand their sales if prices increased;¹²
 - 15.2 constraint from potential new entry – the extent to which new competitors would enter the market and compete if prices increased; and
 - 15.3 the countervailing market power of buyers – the potential constraint on a business from the purchaser’s ability to exert substantial influence on negotiations.

Market definition

16. Market definition is a tool that helps identify and assess the competitive constraints a merged entity is likely to face. We define markets in a way that we consider best isolates the key competition issues that arise from the Proposed Acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.¹³

⁹ The Application at Figure 3.

¹⁰ Mergers and Acquisitions Guidelines above n3.

¹¹ *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

¹² For ease of reference, we only refer to the ability of the merged entity to “raise prices” from this point on. This should be taken to include the possibility that the merged entity could reduce quality or innovation, or worsen an element of service or any other element of competition, ie, it could increase quality-adjusted prices.

¹³ Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

17. The Parties overlap in the supply of feminine hygiene products in New Zealand.¹⁴
18. In the Application, Kimberly-Clark submits that because feminine hygiene products such as tampons, panty liners and sanitary pads (or towels) all serve the same fundamental purpose, and consumers will often purchase more than one type of product, there is a meaningful degree of interplay between them. Kimberly-Clark further submits that as each feminine hygiene product exerts a strong competitive constraint on the other products, an overall product market comprising all feminine hygiene products could be considered.¹⁵ The Parties consider that the market for the supply of feminine hygiene products is national.¹⁶
19. However, Kimberly-Clark also submits that it is not necessary to conclude on market definition given that, regardless of how the relevant market is defined, the Proposed Acquisition will not have the effect, or likely effect, of substantially lessening competition in New Zealand.¹⁷
20. We will consider whether the market definition submitted by Kimberly-Clark is the appropriate market for assessing the competition effects of the Proposed Acquisition, or whether it might be appropriate to define additional, narrower or broader market(s) on the basis of product, geography, and/or customer type. In investigating the above, we are (amongst other things) particularly interested in the views of third parties on:
 - 20.1 the similarities or differences between the different types of feminine hygiene products;
 - 20.2 the similarities or differences within each type of feminine hygiene product (eg, overnight, thin, winged and non-winged versions of sanitary pads (or towels));
 - 20.3 the extent to which customers consider different types of feminine hygiene products (eg, sanitary pads (or towels) and tampons) to be substitutes for one another;
 - 20.4 the factors customers consider most important when choosing which feminine hygiene products to purchase (eg, price, quality, brand etc);
 - 20.5 the extent to which customers consider reusable feminine hygiene products (eg, menstrual cups, discs, and period underwear) to be substitutes for more traditional single-use feminine hygiene products (eg, tampons and sanitary pads); and

¹⁴ The Parties previously also overlapped in relation to the supply of baby wipes, but Kenvue delisted Johnson's Baby Wipes from the Australian and New Zealand markets in 2024 (although there is some remaining residual stock currently being sold). See the Application at [1.5].

¹⁵ The Application at [4.6].

¹⁶ The Application at [4.9].

¹⁷ The Application at [4.3] and [4.7].

- 20.6 the extent to which feminine hygiene product suppliers can switch between supplying different products.

Without the acquisition

21. We will consider what the Parties would do if the Proposed Acquisition did not go ahead. We will consider whether the without-the-merger scenario is best characterised by the status quo, or whether the Parties would seek alternative options.

Preliminary issues

22. We will investigate whether the Proposed Acquisition would be likely to substantially lessen competition in the relevant market (or markets) by assessing whether horizontal (unilateral) or conglomerate effects might result from the Proposed Acquisition. The questions that we will be focusing on are:
- 22.1 Unilateral effects: would the loss of competition between the parties enable the merged entity to profitably raise prices or reduce quality or innovation by itself?
- 22.2 Conglomerate effects: would the merged entity engage in any tying or bundling strategies to prevent or inhibit rivals from competing?
- 22.3 Would the proposed divestment be effective in addressing these effects (to the extent that we consider they arise)?

Unilateral effects: would the merged entity be able to profitably raise prices by itself?

23. Unilateral effects arise when a firm merges with a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors). The merged firm may be able to profitably increase price above the level that would prevail without the merger if not thwarted by rival firms' competitive responses.
24. In the Application, Kimberly-Clark submits that the Proposed Acquisition would not be likely to substantially lessen competition due to unilateral effects because:
- 24.1 There are numerous well-established suppliers of feminine hygiene products worldwide and in New Zealand, such as Essity (which produces Libra and TOM Organic), Procter and Gamble (which produces Tampax) and Organic Initiative.¹⁸
- 24.2 Private label suppliers of feminine hygiene products are becoming increasingly strong competitors to branded suppliers. Both Woolworths and Foodstuffs offer private label product ranges that are available through their respective supermarket chains.¹⁹

¹⁸ The Application at [5.6]-[5.7].

¹⁹ The Application at [5.9].

- 24.3 Suppliers and manufacturers in adjacent product and geographic markets are well-positioned to expand into the manufacturing of feminine hygiene products. There are no material barriers to entry, and potential suppliers would be able to use third-party contract manufacturers to expand quickly.²⁰
- 24.4 Reusable feminine hygiene products such as menstrual cups, menstrual discs, period underwear and reusable sanitary pads (or towels) and panty liners act as direct competitive pressure in the supply of traditional products like tampons, sanitary pads (or towels) and panty liners.²¹
- 24.5 The Parties' major customers (such as grocery chains, retailers and pharmacies) are typically large corporate entities that possess sufficient buyer power to counteract any increased power of the merged entity post-acquisition. These customers will continue to have adequate choice of suppliers and will retain significant countervailing power, including the ability to de-list, or threaten to de-list, the merged entity's feminine hygiene products without the risk of losing customers or significant costs.²²
25. We will consider:
- 25.1 closeness of competition: the degree of constraint that Kimberly-Clark and Kenvue would impose upon one another if the Proposed Acquisition does not go ahead. To the extent that any constraint is material, we will assess whether the lost competition (or potential competition) between the Parties could be replaced by rival competitors;
- 25.2 remaining competitive constraints: the degree of constraint that existing competitors would impose on the merged entity;
- 25.3 entry and expansion: how easily rivals could enter and/or expand; and
- 25.4 countervailing power: whether customers have special characteristics that would enable them to resist a price increase by the merged entity.
26. In investigating the above, we are (amongst other things) particularly interested in the views of industry participants on:
- 26.1 how closely Kimberly-Clark and Kenvue currently compete, including how they have competitively reacted to each other or the extent to which they have regard for each other in setting their respective prices, discounts and market strategies;
- 26.2 the degree of competitive constraint provided by other feminine hygiene product suppliers;

²⁰ The Application at [5.11]-[5.12].

²¹ The Application at [5.19]-[5.20].

²² The Application at [5.22].

- 26.3 who the major competitors are to Kimberly-Clark and Kenvue in the supply of feminine hygiene products and how this competition occurs;
- 26.4 the extent to which reusable feminine hygiene products act as a constraint on the products supplied by the Parties;
- 26.5 what would be required for a new feminine hygiene product supplier to enter the relevant market, including whether that varies by product, and the feasibility of using a third-party contract manufacturer to enter the market;
- 26.6 any examples of recent entry or expansion, and the success of those examples;
- 26.7 whether customers of the Parties possess special characteristics that would enable them to resist a price increase by the merged entity; and
- 26.8 the impact that the Proposed Acquisition may have on the state of competition in the relevant market(s).

Conglomerate effects: would the merged entity engage in any tying or bundling strategies to prevent or inhibit rivals from competing?

- 27. A merger or acquisition can substantially lessen competition if a merged firm provides bundled discounts where customers buy products together rather than separately (bundling), or may refuse to sell one product to customers unless they also buy a second product from it (tying). Such bundled discounts or tying may mean that competitors that cannot sell the same range of products as the merged firm may be foreclosed. This means they would not provide a competitive constraint on the merged entity for the product both firms sell.²³
- 28. In the Application, Kimberly-Clark submits that the Proposed Acquisition would not be likely to substantially lessen competition due to conglomerate effects because it is not possible that any of the Parties' competitors could be foreclosed in any market.²⁴ Kimberly-Clark further submits that:²⁵
 - 28.1 the products the Parties supply in New Zealand do not belong to neighbouring markets as they are not complementary to one another;
 - 28.2 the Parties' customers in New Zealand such as the major supermarket chains and Chemist Warehouse are sophisticated companies that enjoy a high degree of bargaining power and have the means to prevent any bundling attempts; and

²³ Mergers and Acquisitions Guidelines above n3 at [5.13]-[5.14]

²⁴ The Application at [5.30].

²⁵ The Application at [5.30(a)-(c)].

- 28.3 customers in New Zealand tend to multi-source from multiple suppliers and negotiate separately for each type of product, making bundling across product categories highly impracticable.
29. We will consider whether the Proposed Acquisition would give rise to conglomerate effects. That is, whether the merged entity would gain the ability and incentive to use anticompetitive bundling or tying strategies.

The Proposed Divestment

30. In the Application, Kimberly-Clark states that it proposes to offer a divestment to remove the competitive overlap between itself and Kenvue that may result from the Proposed Acquisition, namely in the supply of feminine hygiene products. Kimberly-Clark is proposing to divest Kenvue's feminine hygiene offering in New Zealand and Australia.²⁶
31. Where a merger raises competition concerns, an applicant can provide an undertaking to sell assets or shares as a condition of clearance.²⁷ For a divestment undertaking to remedy competition concerns, we must be satisfied that the divestment will result in sufficient additional competitive constraint on the merged firm so that a substantial lessening of competition is no longer likely.²⁸
32. To make this assessment, we consider all the relevant risks associated with the divestment undertaking. We assess three kinds of risk associated with divestment undertakings:²⁹
- 32.1 Composition risk – the risk that the scope of a divestment undertaking may be too limited, or not appropriately configured, to attract a suitable purchaser or to allow a successful business to be operated in competition with the merged entity.
- 32.2 Asset risk – the risk that the competitiveness of a divested business will deteriorate prior to the completion of the divestment.
- 32.3 Purchaser risk – the risk that there may not be a purchaser that is acceptable to us and/or the risk that an applicant has an incentive to sell to a party who would not be a strong competitor.
33. When assessing the proposed divestment we will consider:
- 33.1 whether there are any composition risks, including whether the potential purchaser of the divested assets will require additional assets or services in order to operate them as a viable competitive constraint on the merged firm;

²⁶ The Application at [1.11(d)] and [5.28].

²⁷ Mergers and Acquisitions Guidelines above n3, Attachment F at [F2], and section 69A of the Act.

²⁸ Mergers and Acquisitions Guidelines above n3, Attachment F at [F12].

²⁹ Mergers and Acquisitions Guidelines above n3, Attachment F at [F15].

- 33.2 whether there are sufficient protections in place to safeguard the competitive effectiveness of Kenvue’s feminine hygiene business during the divestment period; and
- 33.3 whether any of the potential purchasers of the divested assets have the independence, expertise and incentive to be an effective long-term competitor. We will also consider whether the acquisition by any potential purchaser raises separate competition concerns.
34. As a general note, our ability to consider the divestment undertaking as part of our investigation will depend on when we receive it, and how detailed it is.

Next steps in our investigation

35. The Commission is currently scheduled to make a decision on whether to give clearance to the Proposed Acquisition by **28 April 2026**. However, this date may be extended with the agreement of the Applicant if the material before the Commission at that time does not allow it to be satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.³⁰ In particular, if we need to test and consider the issues identified above further, the decision date is likely to extend.
36. As part of our investigation, we will be identifying and contacting parties who we consider will be able to help us assess the preliminary issues identified above.

Making a submission

37. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference “Kimberly-Clark/Kenvue” in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **17 March 2025**.
38. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.
39. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission’s website. If you make a submission and we do not acknowledge receipt of that submission within two working days, you should resubmit your submission.
40. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the

³⁰ The Commission maintains a [case register](#) on our website where we update any changes to our deadlines and provide relevant documents.

OIA, for example in circumstances where disclosure would unreasonably prejudice the supplier or subject of the information.