**Kimberly-Clark Corporation - Kenvue Inc.**

MN-80005

# Phase 1 Determination

## Acquisition may be put into effect with conditions

1 September 2026

# 1. Determination

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| **Notified acquisition** | Kimberly-Clark Corporation, together with its subsidiaries (**Kimberly-Clark**) proposes to acquire Kenvue Inc. and its subsidiaries (**Kenvue**) (the **Acquisition**). |
| **Determination** | The Australian Competition and Consumer Commission has determined under sections 51ABZE(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**) that the Acquisition may be put into effect, subject to conditions.<br><br>The conditions are:<br><br>1. Kimberly-Clark must divest, or cause the divestiture of, the Divestiture Business to a purchaser approved in writing by the ACCC in accordance with a section 87B undertaking accepted by the ACCC.<br><br>2. Kimberly-Clark must provide the ACCC with an executed undertaking under section 87B of the Act in respect of the divestiture of the Divestiture Business, in the form at Attachment A of this determination, within five business days of the date of this determination and comply with that undertaking.<br><br>(together, the **Conditions**).<br><br>The term 'Divestiture Business' is defined in the section 87B undertaking that Kimberly-Clark must give and comply with pursuant to the Conditions. |
| **Parties to the Acquisition** | The acquirer, Kimberly-Clark is a global corporation, headquartered in the United States, which produces and sells personal care products for personal, business and industrial use. Kimberly-Clark's brands include Huggies, Kleenex, and Viva.<br><br>The target, Kenvue is a global corporation, headquartered in the United States, which produces and sells consumer healthcare products. Kenvue's brands include Band-Aid, Zyrtec and Aveeno.<br><br>Kimberly-Clark and Kenvue both supply feminine hygiene (period care) products in Australia, namely tampons, sanitary pads and panty liners under the brands 'U by Kotex' (Kimberly-Clark) and 'Carefree' and 'Stayfree' (Kenvue). |
| **Reasons for determination** | The reasons for the Australian Competition and Consumer Commission (**ACCC**)'s determination are set out in section 2. |

# 2. Statement of reasons

2.1. When making a determination in Phase 1, the ACCC undertakes a competition assessment and considers whether it is appropriate for an acquisition to be approved or subject to further assessment in Phase 2 in accordance with section 51ABZJ of the Act. In doing so, the ACCC must have regard to the object of the Act and all relevant matters, including the interests of consumers.

2.2. Where the ACCC is satisfied that the acquisition, if put into effect, could, in all the circumstances, have the effect of substantially lessening competition in a market, the ACCC may also consider whether any competition issues can be addressed by one or more conditions.

2.3. For more information about the ACCC's approach to considering notified acquisitions, see the ACCC's merger assessment guidelines and interim merger process guidelines.

2.4. In conducting its competition assessment, the ACCC has considered the information and documents that were submitted with the notification form, additional information provided by the parties to the acquisition, market feedback and publicly available information.

2.5. For the reasons given below, the ACCC has determined that the Acquisition may be put into effect with conditions.

## Overlap and relationship between the Parties

2.6. Kimberly-Clark and Kenvue (the **Parties**) overlap in the wholesale supply of feminine hygiene products (tampons, sanitary pads and panty liners). Kimberly-Clark's 'U by Kotex' and Kenvue's 'Carefree' and 'Stayfree' brands are supplied at the wholesale level to supermarkets and other grocery stores, pharmacy wholesalers, discount stores, convenience stores and online retailers.

2.7. The Parties also supply products that could be considered complementary, as they fall within a 'baby care' product category. Kimberly-Clark supplies the 'Huggies' brand of nappies and wipes, and Kenvue supplies both 'Aveeno' and 'Johnson's' branded baby toiletries.

2.8. The ACCC considers that the Parties' baby care products are unlikely to raise competition concerns. This is because third party feedback and information received from the Parties indicates that the merged firm would continue to face competition from multiple alternative suppliers of relevant baby care products, and that retail customers typically negotiate with suppliers on a product-by-product basis, rather than by reference to broader categories such as baby care.

## Industry background

2.9. Feminine hygiene products are used to absorb or collect menstrual blood and principally comprise disposable products including sanitary pads, panty liners, and tampons. Reusable products such as period underwear, menstrual cups/discs and reusable cloth pads comprise a small percentage of feminine hygiene sales in Australia. The Parties' overlap is limited to disposable products, and they are the focus of this Determination.

2.10. Disposable feminine hygiene products are relatively standardised products in terms of their core functionality, with limited scope for meaningful differentiation.

2.11. The Parties are both large global suppliers of feminine hygiene products. In Australia, their main customers are supermarkets and pharmacy wholesalers.

2.12. Third party feedback, including from the retailers of these products, indicates that many consumers of feminine hygiene products have a degree of loyalty to particular brand(s). While consumers do switch, particularly in response to price promotions, it appears that most switching occurs only between the brands owned by the three major suppliers, Kimberly-Clark, Kenvue, and Essity (which supplies feminine hygiene products under the 'Libra' and 'TOM Organic' brands). Information before the ACCC indicates that this is because these suppliers have built up consumer trust and goodwill over a long period of time and have trusted brands with which Australian consumers are familiar.

# 3. Competition assessment

3.1. The ACCC has considered the effects of the Acquisition by comparing the likely future state of competition if the Acquisition proceeds against the continuation of the current state of competition (being the likely future state of competition if the Acquisition does not proceed).

## Relevant areas of competition

3.2. The ACCC considers that, for the purposes of assessing the Acquisition, the relevant area of competition is the market for the supply of feminine hygiene products nationally. The bulk of this market is comprised of three product categories: sanitary pads, panty liners and tampons. The positions of the major competitors are similar across each of these product categories, and considering each product category separately would not change the ACCC's competitive assessment of the Acquisition.

3.3. The Parties provided information to the ACCC that indicates they compete closely in relation to the supply of feminine hygiene products in Australia. This position was also supported by market feedback received by the ACCC from third parties including customers and competitors.

## Competition effects in the supply of feminine hygiene products

3.4. The ACCC is satisfied that, disregarding any conditions the ACCC could include, the Acquisition could, in all the circumstances, have the effect of substantially lessening competition in the supply of feminine hygiene products in Australia.

3.5. The ACCC has considered market shares in the feminine hygiene market using information supplied by the Parties, as well as other market data and third-party feedback. Based on the information available, the ACCC considers that the feminine hygiene market in Australia is highly concentrated, with three major suppliers, being Kimberly-Clark, Kenvue and Essity, and a few smaller alternative suppliers.

3.6. Following the Acquisition, the number of major feminine hygiene suppliers would reduce from 3 to 2. Essity would be the only remaining major competitor to Kimberly-Clark. The Acquisition would therefore materially increase concentration in an already highly concentrated market.

3.7. The ACCC also considers that alternative smaller suppliers would be unlikely to constrain Kimberly-Clark post-Acquisition as they have relatively low market shares, and meaningful new entry, at a scale and in a timeframe sufficient to constrain the

merged entity, would be unlikely due to the importance of brand trust and familiarity to consumers in this market, as discussed at section 2.12 above.

3.8. For these reasons, the ACCC considers that Kimberly-Clark would have the ability to profitably increase prices (including via a reduction in the level or duration of discounted pricing) and/or decrease the quality of feminine hygiene products supplied in Australia post-Acquisition.

## Conditions

3.9. The ACCC has determined under s51ABZE(1) of the Act that the Acquisition may be put into effect, subject to conditions.

3.10. The conditions are:

1. Kimberly-Clark must divest, or cause the divestiture of, the Divestiture Business to a purchaser approved in writing by the ACCC in accordance with a section 87B undertaking accepted by the ACCC.
2. Kimberly-Clark must provide the ACCC with an executed undertaking under section 87B of the Act in respect of the divestiture of the Divestiture Business, in the form at Attachment A of this determination, within five business days of the date of this determination and comply with that undertaking.

(together, the **Conditions**).

The term 'Divestiture Business' is defined in the section 87B undertaking that Kimberly-Clark must give and comply with pursuant to the Conditions.

3.11. In summary, the Divestiture Business comprises Kenvue's feminine hygiene business in Australia and New Zealand, including the 'Stayfree' and 'Carefree' brands and accompanying assets and intangible property.

3.12. The ACCC must not include conditions unless it is satisfied that, disregarding any conditions the ACCC could include, the Acquisition, if put into effect, could, in all the circumstances, have the effect of substantially lessening competition in any market.

3.13. The ACCC must have regard to all relevant matters, and may have regard to the effect on the interests of consumers that compliance with the conditions would have, or be likely to have, or any consumer benefits that would result, or be likely to result from compliance with the conditions.

3.14. It is a contravention of section 45AZ of the Act for a person to put the Acquisition into effect and to not comply with any conditions. Where a person does not comply with conditions, the Federal Court may make orders including, in some circumstances, divestiture or a declaration that the acquisition is void.

## Assessment with the Conditions

3.15. As set out above, the ACCC is satisfied that, disregarding any conditions, the Acquisition could, in all the circumstances, have the effect of substantially lessening competition in the supply of feminine hygiene products in Australia. To address this, the ACCC has decided to include the Conditions in its determination.

3.16. The objective of the Conditions is to address the competition issues identified in respect of the Acquisition, as set out in this determination and statement of reasons.

3.17. The Conditions incorporate a remedy offer Kimberly-Clark made to the ACCC on 28 July 2026.

## The Conditions addresses the competition issues

3.18. The Conditions address the competition issues detailed above by preserving the presence in the relevant market of a third major supplier with known and trusted brands that are attractive to Australian consumers. The Conditions do this by facilitating the entry or expansion of an independent competitor through the divestiture of the Divestiture Business to a purchaser approved by the ACCC.

## The Conditions can be effectively implemented

3.19. The ACCC has had regard to whether there are risks associated with the implementation of the Conditions that may limit the effectiveness of the Conditions in addressing the competition issues. The ACCC considers the Conditions can be effectively implemented.

### Composition of the Divestiture Business

3.20. The ACCC considers that the Divestiture Business is appropriately configured and that a suitable purchaser may operate it effectively. The ACCC has had regard to third party feedback in reaching this view as well as the nature and terms of the Conditions and the undertaking.

### Emergence of an appropriate purchaser

3.21. Based on submissions provided by the Parties and third-party feedback, the ACCC considers there are suitable potential purchasers available to support a timely and effective divestiture of the Divestiture Business to an ACCC-approved purchaser.

### Integrity of the Divestiture Business and other considerations

3.22. The ACCC considers that the integrity of the Divestiture Business will be protected prior to divestiture, and has taken into account other considerations related to the effective implementation of the Conditions.

3.23. The ACCC considers that the integrity of the Divestiture Business will be appropriately managed, including because the undertaking provides for:

- the protection of the Divestiture Business by Kimberly-Clark prior to divestiture,
- the appointment of an ACCC-approved independent manager to manage the Divestiture Business prior to divestiture, and
- the appointment of an ACCC-approved independent auditor to monitor and report on compliance with the undertaking.

# 4. Applications for review and public benefit applications

## Applications for review

4.1. A notifying party, or other person who has been allowed to do so by the Australian Competition Tribunal, may apply for review if they are dissatisfied with the determination. Pursuant to section 100C of the Act, applications for review of the determination are to be made to the Australian Competition Tribunal before the end of 14 calendar days after this statement of reasons was included on the ACCC's acquisitions register. To confirm whether there has been any application for review, please contact the Australian Competition Tribunal.

## Public benefit application

4.2. The notifying party may also apply to the ACCC for a determination that the acquisition would be of public benefit. Pursuant to section 51ABZP(2) of the Act, this application must be made no later than 21 calendar days after the ACCC made this determination.

**Determination made by a division of the Commission constituted by a direction issued pursuant to section 19 of the Act**

# Attachment A – s87B undertaking

## Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Kimberly-Clark Corporation and Kimberly-Clark Australia Pty Limited (ACN 000 032 333)

## Contents


1. Person giving the Undertaking ..... 1
2. Background ..... 1
3. Commencement of this Undertaking ..... 1
4. Cessation of Ongoing Obligations ..... 2
5. Divestiture of the Divestiture Business ..... 2
6. Process for approving a proposed purchaser ..... 5
7. Divestiture Business Protection ..... 7
8. Independent Management of the Divestiture Business ..... 9
9. Independent Audit ..... 13
10. Failure to divest the Divestiture Business within the Initial Sale Period ..... 17
11. Notification of key dates and ACCC requests for information ..... 22
12. Disclosure of this Undertaking ..... 23
13. Obligation to procure ..... 24
14. No Derogation ..... 24
15. Change of Control ..... 24
16. Costs ..... 25
17. Jurisdiction ..... 25
18. Notices ..... 25
19. Defined terms and interpretation ..... 26

Schedule 1 – Dictionary and interpretation ..... 29

Schedule 2 – Proposed Purchaser Notice Form ..... 34

Schedule 3 – Proposed Undertaking Appointment Form ..... 37

Schedule 4 – Divestiture Business ..... 41

Confidential Schedule 5 ..... 49

## 1. Person giving the Undertaking

1.1. This Undertaking is given to the Australian Competition and Consumer Commission (***ACCC***) by Kimberly-Clark Corporation and its subsidiary Kimberly-Clark Australia Pty Limited (ACN 000 032 333) (together referred to as ***Kimberly-Clark*** in this Undertaking).

## 2. Background

**The parties to the proposed acquisition**

2.1. **Acquirer**: Kimberly-Clark Corporation is a Delaware corporation headquartered in Irving, Texas, United States. Kimberly-Clark Corporation is active globally in the sale of a range of personal care products made from natural or synthetic materials using advanced technologies in fibres, nonwovens and absorbency for personal, business, and industrial use. Kimberly-Clark Corporation operates in Australia through its subsidiary Kimberly-Clark Australia Pty Limited (ACN 000 032 333), which manufactures and sells baby care, adult care and feminine hygiene products.

2.2. **Target**: Kenvue Inc. is a Delaware corporation headquartered in Summit, New Jersey, United States. Kenvue Inc. is active globally in the manufacturing and supply of consumer health products in the following categories: (1) Self-Care (2) Skin Health and Beauty, and (3) Essential Health. Kenvue Inc. operates in Australia through its subsidiary Johnson & Johnson Pacific Pty Limited (ACN 001 121 446), which manufactures and sells a range of consumer health products across the same categories.

**The Proposed Acquisition**

2.3. On 2 November 2025, Kimberly-Clark Corporation (and its two direct wholly owned subsidiaries, Vesta Sub I, Inc. and Vesta Sub II, LLC) entered into an Agreement and Plan of Merger with Kenvue Inc. under which it will acquire sole control (by way of merger) over Kenvue Inc. As a result, Kenvue Inc. will become a wholly owned subsidiary of Kimberly-Clark Corporation and therefore be solely controlled by Kimberly-Clark Corporation (the ***Proposed Acquisition***).

**The Notification**

2.4. On 28 July 2026, Kimberly-Clark Corporation lodged a notification in respect of the Proposed Acquisition with the ACCC (the ***Notification***).

2.5. The objective of this Undertaking is to address the concerns about the Proposed Acquisition set out in the ACCC's determination and statement of reasons in respect of the Notification.

## 3. Commencement of this Undertaking

3.1. This Undertaking comes into effect when:

(a) this Undertaking is executed by Kimberly-Clark; and

(b) this Undertaking so executed is accepted by the ACCC

(the **Commencement Date**).

## 4. Cessation of Ongoing Obligations

**Withdrawal**

4.1. With the written consent of the ACCC, Kimberly-Clark may withdraw from this Undertaking. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

**Revocation**

4.2. The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading. Such a revocation must be express and in writing.

**Waiver**

4.3. The ACCC may, at any time, waive any of the obligations contained in this Undertaking. Such a waiver must be express and in writing.

**Extension**

4.4. The ACCC may, at any time, extend the date by which any of the obligations in this Undertaking is to be satisfied. Such an extension must be express and in writing.

**Survival**

4.5. Unless and until this Undertaking is withdrawn in accordance with s87B(2) of the Act, clauses 1, 2, 3, 4, 9, 11, 12, 13, 14, 15, 16 and 17 survive completion of the obligations in clauses 5, 6, 7, 8, 10, Schedule 4 and Confidential Schedule 5.

## 5. Divestiture of the Divestiture Business

**Divestiture**

5.1. Kimberly-Clark must, in accordance with this Undertaking, divest, or cause the divestiture of, the Divestiture Business only to an Approved Purchaser.

5.2. In the event that clause 10 applies, Kimberly-Clark must not authorise the Approved Divestiture Agent to divest the Unsold Business to a purchaser other than an Approved Purchaser.

5.3. Kimberly-Clark must divest, or cause the divestiture of, the Divestiture Business by:

(a) the sale, assignment, transfer and/or licence of all of the assets in Schedule 4 to the Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement and within the Initial Sale Period, otherwise clause 10 applies;

(b) the transfer or grant to the Approved Purchaser of all Consents pursuant to clauses 5.4 to 5.5;

(c) the transfer of any Transferred Personnel required pursuant to clauses 5.7 to 5.8;

(d) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.9 to 5.11; and

(e) compliance with any Approved Transitional Supply Agreement required pursuant to clauses 5.12 to 5.14.

**Consents**

5.4. Kimberly-Clark must:

(a) obtain or assist the Approved Purchaser to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of the Divestiture Business;

(b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;

(c) act in good faith in its negotiations with the Approved Purchaser in relation to obtaining any Consents;

(d) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and

(e) enter an agreement with the Approved Purchaser that is approved by the ACCC, or vary any existing Approved Transitional Supply Agreement as required by the Approved Purchaser, in relation to any goods or services that are required for the operation of the Divestiture Business which may be affected by any failure to gain a Consent.

5.5. If, seven Business Days before completion of the divestiture of the Divestiture Business, the Approved Purchaser does not or is otherwise unable to obtain one or more Consents, then Kimberly-Clark must:

(a) immediately provide to the ACCC in writing details of the:

(i) Consents that have not been obtained;

(ii) reasons why the Consents have not been obtained; and

(iii) information or material required to obtain the Consents.

(b) continue to do everything in its power to satisfy clause 5.4 as soon as possible after the completion of the divestiture of the Divestiture Business (and until such time as clause 5.4 is satisfied).

5.6. Even if Kimberly-Clark has complied with clauses 5.4 to 5.5, Kimberly-Clark will be in breach of this Undertaking if Kimberly-Clark is unable to effect the divestiture of the Divestiture Business by reason that one or more Consents are not obtained.

**Transferred Personnel**

5.7. At the option of the Approved Purchaser, Kimberly-Clark must transfer to the Approved Purchaser:

(a) all employees; and

(b) all service providers under a contract for service;

who are, in the view of the Approved Purchaser, required for the Approved Purchaser to maintain, operate or conduct effectively the Divestiture Business and who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**).

5.8. When fulfilling its obligations under clause 5.7, Kimberly-Clark must:

(a) encourage all Transferred Personnel to remain with the Divestiture Business, including offering incentives based on industry practice;

(b) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the Divestiture Business;

(c) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any obligations to provide services to Kimberly-Clark;

(d) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the Divestiture Business or Unsold Business; and

(e) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to Kimberly-Clark for a period of 12 months after the completion of the divestiture of the Divestiture Business.

**Technical Assistance**

5.9. At the option of the Approved Purchaser, Kimberly-Clark must supply to the Approved Purchaser, under an Approved Transitional Technical Assistance Agreement, any Technical Assistance that is required by the Approved Purchaser in order to operate the Divestiture Business.

5.10. Kimberly-Clark must ensure that any Approved Transitional Technical Assistance Agreement, and any renewal or extension of an Approved Transitional Technical Assistance Agreement, provides for the supply of Technical Assistance:

(a) on a transitional basis for a period that is nominated by the Approved Purchaser and approved in writing by the ACCC; and

(b) at cost price and otherwise on arm's length terms.

5.11. To avoid doubt, Kimberly-Clark must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Technical Assistance Agreement. Without limiting the ACCC's discretion in making a decision on whether to approve a renewal or extension of an Approved Transitional Technical Assistance Agreement, the ACCC will have regard to the criteria set out in clauses 5.9 and 5.10.

**Transitional Supply Agreements**

5.12. At the option of the Approved Purchaser, Kimberly-Clark must ensure the continued supply by Kimberly-Clark to the Approved Purchaser, under an Approved Transitional Supply Agreement, of any goods or services that are required by the Approved Purchaser in order for the Approved Purchaser to be established as a viable, effective, stand-alone, independent and long-term competitor in the supply of feminine hygiene products in Australia.

5.13. Kimberly-Clark must ensure that any Approved Transitional Supply Agreement and any renewal or extension of an Approved Transitional Supply Agreement:

(a) is for a reasonable transitional period, to be nominated by the Approved Purchaser and approved in writing by the ACCC;

(b) provides for the manufacture and supply of the included goods and services at cost price; and

(c) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.

5.14. To avoid doubt, Kimberly-Clark must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Supply Agreement. Without limiting the ACCC's discretion in making a decision on whether to approve a renewal or extension of an Approved Transitional Supply Agreement, the ACCC will have regard to the criteria set out in clauses 5.12 and 5.13.

## 6. Process for approving a proposed purchaser

**Potential purchasers**

6.1. Kimberly-Clark must provide the ACCC and Approved Independent Auditor with:

(a) the identity of any person who expresses an interest in acquiring the Divestiture Business;

(b) the status of negotiations with each person; and

(c) a copy of each person's offer to acquire the Divestiture Business, where relevant;

at the following times:

(d) as soon as possible following the Commencement Date for those persons who express interest before the Commencement Date;

(e) after the Commencement Date, within 10 Business Days of each person expressing the interest and/or providing an offer;

regardless of whether the person subsequently withdraws or is declined.

**Provision of a notice for a Proposed Purchaser**

6.2. To seek ACCC approval for a Proposed Purchaser, Kimberly-Clark or the Approved Divestiture Agent must provide the ACCC with a notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**), including a draft sale and purchase agreement, a draft transitional technical assistance agreement (where required by the Proposed Purchaser), and a draft transitional supply agreement (where required by the Proposed Purchaser).

6.3. The Proposed Purchaser Notice must be provided to the ACCC at least 20 Business Days prior to the end of the Initial Sale Period.

**Approval of a Proposed Purchaser after the Commencement Date**

6.4. The ACCC may, in its discretion, approve or reject in writing the Proposed Purchaser identified in the Proposed Purchaser Notice. In exercising this discretion, the ACCC will consider, without limitation:

(a) the draft sale and purchase agreement attached to the Proposed Purchaser Notice;

(b) any draft transitional technical assistance agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.9 and 5.10; and

(c) any draft transitional supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.12 and 5.13.

6.5. Without limiting the ACCC's discretion, in making the decision pursuant to clause 6.4, the factors to which the ACCC may have regard include whether the:

(a) draft sale and purchase agreement is consistent with this Undertaking;

(b) Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;

(c) Proposed Purchaser is independent of Kimberly-Clark;

(d) Proposed Purchaser is of good financial standing;

(e) Proposed Purchaser has a history of competition law compliance;

(f) Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;

(g) Proposed Purchaser is able to conduct the Divestiture Business effectively; and

(h) divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including in relation to the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser.

6.6. The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

## 7. Divestiture Business Protection

**Protection of the Divestiture Business**

7.1. From the Control Date, Kimberly-Clark must not sell or transfer its interest, or any assets comprising part of, or used in, the Divestiture Business (other than the sale of goods and services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking or (subject to the other terms of this Undertaking) as necessary to allow completion of the Proposed Acquisition.

**Kimberly-Clark's obligations in relation to the Divestiture Business prior to completion of divestiture**

7.2. Without limiting this clause 7, Kimberly-Clark must, from the Control Date until completion of the divestiture of the Divestiture Business, take all steps available to it to:

(a) ensure that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Control Date;

(b) continue to provide access to working capital and sources of credit for the Divestiture Business in a manner which is consistent with the financing of the Divestiture Business before the Control Date;

(c) continue to provide administrative and technical support for the Divestiture Business in a manner which is consistent with the operation of the Divestiture Business before the Control Date and in accordance with any plans established before the Control Date;

(d) continue existing Agreements relating to the Divestiture Business with customers, suppliers and/or other third parties that are in place at the Control Date;

(e) renew or replace upon expiry Material Contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;

(f) maintain the supply of those goods and services that are part of the Divestiture Business to existing customers in a manner consistent with the supply of those goods and services as at the Control Date;

(g) maintain the standard of manufacture, distribution, promotion and sale of those products which form part of the Divestiture Business as at the Control Date;

(h) promote and market the products that form part of the Divestiture Business in accordance with any plans established before the Control Date; and

(i) carry out such other actions or plans that the Approved Independent Manager considers to be necessary or convenient to maintain the Divestiture Business as an effectively competitive going concern.

**Personnel of Kimberly-Clark**

7.3. From the Control Date until completion of the divestiture of the Divestiture Business, Kimberly-Clark must:

(a) in consultation with the Approved Independent Manager, replace any

(i) Transferred Personnel; or

(ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Business;

who leave or will leave the Divestiture Business before divestiture;

(b) not terminate or vary the terms of employment or engagement (or agree to do any of those things) of any of the

(i) Transferred Personnel; or

(ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Business; and

(c) not directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the Divestiture Business as at the Control Date to any other business operated by Kimberly-Clark.

7.4. As soon as practicable after the Commencement Date, Kimberly-Clark must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with Kimberly-Clark's obligations under this Undertaking.

**Kimberly-Clark's ongoing obligations in relation to the Divestiture Business**

7.5. To the extent Kimberly-Clark has obligations in relation to the provision of transitional technical assistance or continued supply pursuant to clauses 5.9 to 5.14 of this Undertaking in relation to the Divestiture Business, Kimberly-Clark must not sell, assign, transfer, and/or licence directly or indirectly any of the assets necessary to fulfil such obligations without the prior written consent of the ACCC.

**Confidential Information**

7.6. Subject to clause 7.7, Kimberly-Clark must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Business gained through:

(a) ownership and/or management of the Divestiture Business; or

(b) fulfilling any obligations pursuant to this Undertaking.

7.7. Clause 7.6 does not apply to information that Kimberly-Clark requires to:

(a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or

(b) carry out its obligations pursuant to this Undertaking;

provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of Kimberly-Clark who need to know the information to carry out the permitted purpose.

## 8. Independent Management of the Divestiture Business

**Obligation to appoint an Approved Independent Manager**

8.1. Kimberly-Clark must appoint and maintain an Approved Independent Manager to manage the Divestiture Business, from the Control Date until the completion of the divestiture of the Divestiture Business in accordance with this Undertaking.

**Process for approving a Proposed Independent Manager**

8.2. At least 15 Business Days before the Control Date, Kimberly-Clark must provide the ACCC with a notice for a Proposed Independent Manager in the form prescribed in Schedule 3 to this Undertaking (***Proposed Independent Manager Notice***), including a draft terms of appointment and a draft separation and management plan.

8.3. If clauses 8.12, 8.13 or 8.14 apply, Kimberly-Clark must provide the ACCC with a Proposed Independent Manager Notice within five Business Days after the relevant event occurs.

8.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Manager identified in the Proposed Independent Manager Notice.

8.5. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Manager, the factors to which the ACCC may have regard include whether the:

(a) person named in the Proposed Independent Manager Notice or identified by the ACCC has the qualifications and experience necessary to manage the Divestiture Business;

(b) person named in the Proposed Independent Manager Notice or identified by the ACCC is sufficiently independent of Kimberly-Clark;

(c) draft terms of appointment and the draft separation and management plan are consistent with this Undertaking; and

(d) draft terms of appointment and the draft separation and management plan are otherwise acceptable to the ACCC.

**Appointment of the Approved Independent Manager**

8.6. After receiving a written notice from the ACCC of its approval of the Proposed Independent Manager, the draft terms of appointment and draft separation and management plan, Kimberly-Clark must by the Control Date:

(a) appoint the person approved by the ACCC as the Approved Independent Manager on the Approved Terms of Appointment; and

(b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

**Failure to appoint**

8.7. If:

(a) the Approved Independent Manager has not been appointed by the Control Date;

(b) the Approved Independent Manager has not been appointed within 15 Business Days after the Approved Independent Manager resigns or otherwise ceases to act as the Approved Independent Manager pursuant to clause 8.12, 8.13 or 8.14; or

(c) the ACCC has not received a Proposed Independent Manager Notice pursuant to clause 8.2 or 8.3;

then clause 8.8 applies.

8.8. If clause 8.7 applies, the ACCC may, in its discretion:

(a) identify and approve a person as the Approved Independent Manager, including approving the draft terms of appointment of the Approved Independent Manager and the draft separation and management plan; and/or

(b) direct Kimberly-Clark to appoint a person who the ACCC has deemed is an Approved Independent Manager.

**Obligations and powers of the Approved Independent Manager**

8.9. Kimberly-Clark must procure that any proposed terms of appointment for the Approved Independent Manager include obligations on the Approved Independent Manager to:

(a) maintain his or her independence from Kimberly-Clark, apart from appointment to the role of Approved Independent Manager, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with Kimberly-Clark for the period of his or her appointment;

(b) act in the best interests of the Divestiture Business at all times including ensuring that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Control Date;

(c) not use any confidential information gained through the management of the Divestiture Business other than for performing his or her functions as Approved Independent Manager;

(d) make only those Material Changes to the Divestiture Business which the ACCC does not object to;

(e) operate and manage the Divestiture Business to the maximum extent practicable, in a manner which is financially and operationally separate from Kimberly-Clark;

(f) co-operate with the requests of any Approved Divestiture Agent or Approved Independent Auditor appointed pursuant to this Undertaking.

(g) provide the following reports directly to the ACCC:

(i) a monthly written report regarding the implementation of and any suggested changes to the Approved Separation and Management Plan; and

(ii) an immediate report of any issues that arise in relation to the implementation of the Approved Separation and Management Plan or Kimberly-Clark's compliance with this Undertaking; and

(h) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Manager pursuant to this Undertaking.

8.10. Kimberly-Clark must procure that any proposed terms of appointment for the Approved Independent Manager provide the Approved Independent Manager with the sole authority to:

(a) manage and operate the Divestiture Business according to the Approved Separation and Management Plan until the completion of the divestiture of the Divestiture Business;

(b) provide any information requested by Kimberly-Clark pursuant to the protocol in the Approved Separation and Management Plan;

(c) decide whether or not to provide access and the manner of such access to competitively sensitive information relating to the Divestiture Business requested by Kimberly-Clark which is not covered by the protocol in the Approved Separation and Management Plan;

(d) renew or replace upon expiry Material Contracts and enter into new contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;

(e) engage, redeploy or make redundant personnel employed in the Divestiture Business as the Approved Independent Manager determines necessary; and

(f) engage any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager.

**Kimberly-Clark's obligations in relation to the Approved Independent Manager**

8.11. Without limiting its obligations in this Undertaking, Kimberly-Clark must:

(a) comply with and enforce the Approved Terms of Appointment of the Approved Independent Manager;

(b) maintain and fund the Approved Independent Manager to carry out his or her functions, including:

(i) indemnifying the Approved Independent Manager for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Manager of his or her functions as the Approved Independent Manager except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Manager;

(ii) ensuring that the Approved Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Independent Manager considers are required by the Divestiture Business; and

(iii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager; and

(c) not interfere with the authority of, or otherwise hinder, the Approved Independent Manager's ability to carry out his or her obligations as the Approved Independent Manager, including:

(i) accepting (and directing its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Independent Manager as to the control, management, financing and operations of the Divestiture Business, and for the Divestiture Business to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;

(ii) providing access to the facilities, sites or operations of the Divestiture Business required by the Approved Independent Manager;

(iii) providing to the Approved Independent Manager any information or documents that they consider necessary for managing and operating the Divestiture Business or for reporting to or otherwise advising the ACCC; and

(iv) not requesting information or reports regarding the Divestiture Business from the personnel of the Divestiture Business except through the Approved Independent Manager; and

(v) not appointing the Approved Independent Manager, or have any Agreements with the Approved Independent Manager, to utilise the Approved Independent Manager's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Manager ceases to act in the role of the Approved Independent Manager.

**Resignation, revocation or termination of the Approved Independent Manager**

8.12. Kimberly-Clark must immediately notify the ACCC in the event that the Approved Independent Manager resigns or otherwise stops acting as the Approved Independent Manager before the completion of the divestiture of the Divestiture Business.

8.13. The ACCC may revoke an Approved Independent Manager's status as the Approved Independent Manager if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

8.14. The ACCC may approve any proposal by, or alternatively may direct, Kimberly-Clark to terminate the appointment of the Approved Independent Manager if in the ACCC's view the Approved Independent Manager acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

## 9. Independent Audit

**Obligation to appoint an Approved Independent Auditor**

9.1. Kimberly-Clark must appoint and maintain an Approved Independent Auditor to audit and report upon Kimberly-Clark's compliance with this Undertaking.

**Process for approving a Proposed Independent Auditor**

9.2. At least 15 Business Days before the Control Date, Kimberly-Clark must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.

9.3. The Approved Independent Auditor is to be appointed for a term of two years. Within 15 Business Days of the end of the Approved Independent Auditor's term, Kimberly-Clark must provide the ACCC with a new Proposed Independent Auditor Notice. A person who is, or who has been, the Approved Independent Auditor is eligible for reappointment as the Approved Independent Auditor.

9.4. If clauses 9.17, 9.18 or 9.19 apply, Kimberly-Clark must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs.

9.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.

9.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:

(a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;

(b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of Kimberly-Clark;

(c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and

(d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

**Appointment of the Approved Independent Auditor**

9.7. After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, Kimberly-Clark must by the Control Date:

(a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and

(b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

**Failure to appoint**

9.8. If:

(a) the Approved Independent Auditor has not been appointed by the Control Date;

(b) the Approved Independent Auditor has not been appointed within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 9.17, 9.18, or 9.19; or

(c) the ACCC has not received a Proposed Independent Auditor Notice pursuant to clauses 9.2 and 9.4;

then clause 9.9 applies.

9.9. If clause 9.8 applies, the ACCC at its absolute discretion may:

(a) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or

(b) direct Kimberly-Clark to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

**Obligations and powers of the Approved Independent Auditor**

9.10. Kimberly-Clark must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:

(a) maintain his or her independence from Kimberly-Clark, apart from appointment to the role of Approved Independent Auditor, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with Kimberly-Clark for the period of his or her appointment;

(b) conduct compliance auditing according to the Approved Audit Plan;

(c) where requested by the ACCC, assess the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business against the factors (as relevant) in clause 6.5;

(d) provide the following reports directly to the ACCC:

(i) a scheduled written Audit Report as described in clause 9.12;

(ii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and

(iii) where requested by the ACCC, a report on the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business following an assessment under clause 9.10(c); and

(e) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.

9.11. Kimberly-Clark must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:

(a) access the facilities, sites or operations of the Divestiture Business and Kimberly-Clark's other businesses as required by the Approved Independent Auditor;

(b) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and

(c) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

**Compliance Audit**

9.12. The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:

(a) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;

(b) a full audit of Kimberly-Clark's compliance with this Undertaking;

(c) identification of any areas of uncertainty or ambiguity in the Approved Independent Auditor's interpretation of any obligations contained in this Undertaking;

(d) all of the reasons for the conclusions reached in the Audit Report;

(e) any qualifications made by the Approved Independent Auditor in forming his or her views;

(f) any recommendations by the Approved Independent Auditor to improve:

(i) the Approved Audit Plan;

(ii) the integrity of the auditing process;

(iii) Kimberly-Clark's processes or reporting systems in relation to compliance with this Undertaking; and

(iv) Kimberly-Clark's compliance with this Undertaking; and

(g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.

9.13. The Approved Independent Auditor is to provide an Audit Report to the ACCC and Kimberly-Clark at the following times:

(a) within 20 Business Days after the Control Date, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);

(b) every month from the date of the Establishment Audit until one month after the divestiture of the Divestiture Business is completed; and

(c) every three months after the date of provision of the last Audit Report pursuant to clause 9.13(b), until the ACCC confirms in writing to Kimberly-Clark that it is satisfied that Kimberly-Clark has fulfilled its obligations pursuant to this Undertaking.

9.14. Kimberly-Clark must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.

9.15. Kimberly-Clark must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

**Kimberly-Clark's obligations in relation to the Approved Independent Auditor**

9.16. Without limiting its obligations in this Undertaking, Kimberly-Clark must:

(a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;

(b) maintain and fund the Approved Independent Auditor to carry out his or her functions including:

(i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;

(ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and

(c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:

(i) directing Kimberly-Clark personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;

(ii) providing access to the facilities, sites or operations of the Divestiture Business and Kimberly-Clark's other businesses as required by the Approved Independent Auditor;

(iii) providing to the Approved Independent Auditor any information or documents that they consider necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;

(iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and

(v) not appointing the Approved Independent Auditor, or have any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

**Resignation, revocation or termination of the Approved Independent Auditor**

9.17. Kimberly-Clark must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.

9.18. The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it in connection with the appointment of the Approved Independent Auditor was incorrect, inaccurate or misleading.

9.19. The ACCC may approve, pursuant to clause 9.5, any proposal by, or alternatively may direct, Kimberly-Clark to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking and/or the Approved Terms of Appointment or the Approved Independent Auditor fails to perform their role to an adequate standard.

## 10. Failure to divest the Divestiture Business within the Initial Sale Period

**Divestiture of the Unsold Business**

10.1. In the event that the divestiture of the Divestiture Business to an Approved Purchaser is not completed by the end of the Initial Sale Period, the Divestiture Business becomes an unsold business (**Unsold Business**) and the provisions of this clause 10 apply.

**Obligation to appoint an Approved Divestiture Agent**

10.2. From the end of the Initial Sale Period, Kimberly-Clark must appoint and maintain an Approved Divestiture Agent to effect the divestiture of the Unsold Business.

**Process for approving a Proposed Divestiture Agent**

10.3. At least 15 Business Days prior to the end of the Initial Sale Period, if the divestiture of the Divestiture Business has not been completed, Kimberly-Clark must provide the ACCC with a notice for a Proposed Divestiture Agent in the form of Schedule 3 to this Undertaking (**Proposed Divestiture Agent Notice**) including draft terms of appointment, a draft business sale agreement, and draft marketing and sale plan.

10.4. If clauses 10.14, 10.15 or 10.16 apply, Kimberly-Clark must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days after the relevant event occurs.

10.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Divestiture Agent.

10.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Divestiture Agent, the factors to which the ACCC may have regard include whether the:

(a) person named in Proposed Divestiture Agent Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Agent;

(b) person named in the Proposed Divestiture Agent Notice or identified by the ACCC is sufficiently independent of Kimberly-Clark;

(c) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are consistent with this Undertaking; and

(d) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.

**Appointment of the Approved Divestiture Agent**

10.7. After receiving written notice from the ACCC of its approval of the Proposed Divestiture Agent, the draft terms of appointment, draft business sale agreement and draft marketing and sale plan, Kimberly-Clark must within two Business Days:

(a) appoint the person approved by the ACCC as the Approved Divestiture Agent on the Approved Terms of Appointment; and

(b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

**Failure to appoint**

10.8. If:

(a) the Approved Divestiture Agent has not been appointed within 10 Business Days after the Divestiture Business becomes an Unsold Business;

(b) the Approved Divestiture Agent has not been appointed within 15 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clauses 10.14, 10.15 or 10.16; or

(c) the ACCC has not received a Proposed Divestiture Agent Notice pursuant to clauses 10.3 and 10.4;

then clause 10.9 applies.

10.9. If clause 10.8 applies, the ACCC may, at its absolute discretion:

(a) identify and approve a person as the Approved Divestiture Agent, including approving the draft terms of appointment of the Approved Divestiture Agent, draft business sale agreement and draft marketing and sale plan; and/or

(b) direct Kimberly-Clark to appoint a person who the ACCC has deemed is an Approved Divestiture Agent.

**Obligations and powers of the Approved Divestiture Agent**

10.10. Kimberly-Clark must procure that any proposed terms of appointment for the Approved Divestiture Agent include obligations on the Approved Divestiture Agent to:

(a) divest the Unsold Business only to an Approved Purchaser, at no minimum price;

(b) maintain his or her independence from Kimberly-Clark, apart from appointment to the role of Approved Divestiture Agent, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with Kimberly-Clark for the period of his or her appointment;

(c) not use any confidential information gained through the divestiture of the Unsold Business other than for performing his or her functions as Approved Divestiture Agent;

(d) follow the Approved Marketing and Sale Plan;

(e) use his or her best endeavours to enter into a binding agreement for the divestiture of the Unsold Business as quickly as possible using the Approved Business Sale Agreement;

(f) co-operate with the requests of any Approved Independent Manager or Approved Independent Auditor appointed pursuant to this Undertaking;

(g) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:

(i) information regarding the implementation of the Approved Business Sale Agreement and the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;

(ii) information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;

(iii) an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his or her duties by month and to the date of the report;

(iv) a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.11(d);

(v) the efforts made to sell the Unsold Business;

(vi) the identity of any advisers engaged;

(vii) the identity of any persons expressing interest in the Unsold Business; and

(viii) any other information required by the ACCC.

(h) within 30 Business Days after the completion of the divestiture of the Unsold Business, provide a written report directly to the ACCC which includes a final accounting of:

(i) any moneys derived from the divestiture of the Unsold Business;

(ii) all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and

(iii) all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.11(d);

(i) immediately inform the ACCC of:

(i) any issues that arise in relation to the implementation of the Approved Business Sale Agreement and any Approved Marketing and Sale Plan;

(ii) non-compliance with this Undertaking by any person named in this Undertaking;

(iii) any offers for the Unsold Business;

(j) accept any offer for the Unsold Business upon instruction from Kimberly-Clark given in accordance with clause 10.13(d); and

(k) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Divestiture Agent pursuant to this Undertaking.

10.11. Kimberly-Clark must procure that any proposed terms of appointment for the Approved Divestiture Agent contain an irrevocable grant of power of attorney conferring all necessary power and authority on the Approved Divestiture Agent to:

(a) negotiate with purchasers to divest the Unsold Business on terms considered by the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking and the Approved Marketing and Sale Plan;

(b) execute any agreements with the Approved Purchaser required pursuant to clause 6.4;

(c) upon instruction pursuant to clause 10.13(d), complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the Approved Business Sale Agreement; and

(d) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.

10.12. Any irrevocable power of attorney granted pursuant to clause 10.11 will end upon resignation or termination of the Approved Divestiture Agent in accordance with clauses 10.14, 10.15 and 10.16, or in the event that the Unsold Business is divested in accordance with this Undertaking.

**Kimberly-Clark's obligations in relation to the Approved Divestiture Agent**

10.13. Without limiting its obligations in this Undertaking, Kimberly-Clark must from the end of the Initial Sale Period:

(a) comply with and enforce the Approved Terms of Appointment for the Approved Divestiture Agent;

(b) maintain and fund the Approved Divestiture Agent to carry out his or her functions, including:

(i) indemnifying the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;

(ii) providing and paying for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent;

(iii) paying such fees as are agreed between the Approved Divestiture Agent and Kimberly-Clark (but not fees contingent on the price to be obtained for the Unsold Business); and

(iv) if an agreement as to fees cannot be reached between the Approved Divestiture Agent and Kimberly-Clark within 15 Business Days after the end of the Initial Sale Period, Kimberly-Clark agrees to pay such fees as are directed by the ACCC;

(c) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as the Approved Divestiture Agent, including:

(i) directing its personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 10;

(ii) providing access to the facilities, sites or operations of the Unsold Business as required by the Approved Divestiture Agent; and

(iii) providing to the Approved Divestiture Agent any information, documents or other assistance that they consider necessary for

carrying out his or her functions as the Approved Divestiture Agent or for reporting to or otherwise advising the ACCC;

(d) within three Business Days after receiving notice from the ACCC pursuant to clause 6.4, Kimberly-Clark must instruct the Approved Divestiture Agent to complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.4; and

(e) other than in accordance with clause 10.13(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Business.

**Resignation, revocation or termination of the Approved Divestiture Agent**

10.14. Kimberly-Clark must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the completion of the divestiture of the Unsold Business.

10.15. The ACCC may revoke an Approved Divestiture Agent's status as the Approved Divestiture Agent if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

10.16. The ACCC may approve any proposal by, or alternatively may direct, Kimberly-Clark to terminate an Approved Divestiture Agent if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

## 11. Notification of key dates and ACCC requests for information

11.1. Kimberly-Clark must notify the ACCC and each Undertaking Appointment in writing of:

(a) the anticipated date of the Control Date, at least five Business Days before that date;

(b) the anticipated date of the completion of the divestiture of the Divestiture Business or Unsold Business (as applicable), at least five Business Days before that date;

(c) the occurrence of the Control Date, within one Business Day of that date; and

(d) the occurrence of the completion of the divestiture of the Divestiture Business or Unsold Business (as applicable), within one Business Day of that date.

11.2. The ACCC may direct Kimberly-Clark in respect of its compliance with this Undertaking to, and Kimberly-Clark must:

(a) furnish information to the ACCC in the time and in the form requested by the ACCC;

(b) produce documents and materials to the ACCC within Kimberly-Clark's custody, power or control in the time and in the form requested by the ACCC; and/or

(c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.

11.3. Any direction made by the ACCC under clause 11.2 will be notified to Kimberly-Clark, in accordance with clause 18.2.

11.4. In respect of Kimberly-Clark's compliance with this Undertaking or an Undertaking Appointment's compliance with its Approved Terms of Appointment, the ACCC may request any Undertaking Appointment to:

(a) furnish information to the ACCC in the time and in the form requested by the ACCC;

(b) produce documents and materials to the ACCC within the Undertaking Appointment's custody, power or control in the time and in the form requested by the ACCC; and/or

(c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.

11.5. Kimberly-Clark will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 11.4.

11.6. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.

11.7. The ACCC may in its discretion:

(a) advise any Undertaking Appointment of any request made by it under this clause 11; and/or

(b) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 11.

11.8. Nothing in this clause 11 requires the provision of information or documents in respect of which Kimberly-Clark has a claim of legal professional or other privilege.

## 12. Disclosure of this Undertaking

12.1. Kimberly-Clark and the ACCC agree that Schedule 5 will remain confidential until after the completion of the divestiture of the Divestiture Business or Unsold Business.

12.2. Kimberly-Clark acknowledges that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of Confidential Schedule 5.

12.3. Kimberly-Clark acknowledges that the ACCC may, subject to clause 12.1:

(a) make this Undertaking publicly available;

(b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and

(c) from time to time publicly refer to this Undertaking.

12.4. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from disclosing such information as is:

(a) required by law;

(b) permitted by section 155AAA of the Act;

(c) necessary for the purpose of enforcement action under section 87B of the Act; or

(d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.

12.5. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

## 13. Obligation to procure

13.1. Where the performance of an obligation under this Undertaking requires a Related Body Corporate of Kimberly-Clark to take or refrain from taking some action, Kimberly-Clark will procure that Related Body Corporate to take or refrain from taking that action.

## 14. No Derogation

14.1. This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by Kimberly-Clark of any term of this Undertaking.

14.2. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that Kimberly-Clark does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

## 15. Change of Control

15.1. In the event that a Change of Control is reasonably expected to occur, Kimberly-Clark must:

(a) notify the ACCC of this expectation as soon as practicable; and

(b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on Kimberly-Clark pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Kimberly-Clark in writing that a section 87B undertaking under this clause is not required.

## 16. Costs

16.1. Kimberly-Clark must pay all of its own costs incurred in relation to this Undertaking.

## 17. Jurisdiction

17.1. Kimberly-Clark Corporation irrevocably submits to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.

17.2. Unless and until notified in writing by Kimberly-Clark to the ACCC of the appointment of another person as agent within Australia, Kimberly-Clark appoints Kimberly-Clark Australia Pty Limited as its agent for the purposes of service of process in relation to this Undertaking.

## 18. Notices

**Giving Notices**

18.1. Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@accc.gov.au
Attention: Executive General Manager
Mergers and Exemptions Assessment Division

**With a copy sent to:** mergersru@accc.gov.au
Attention: Director, Remedies Unit
Merger Surveillance & Coordination Branch
Mergers and Exemptions Assessment Division

18.2. Any notice or communication to Kimberly-Clark pursuant to this Undertaking must be sent to:

Name: Kimberly-Clark Corporation

Address: 351 Phelps Drive, Irving Texas 75038

Email Address: **[Redacted – Confidential]**

Phone number: **[Redacted – Confidential]**

Attention: **[Redacted – Confidential]**

Name: Kimberly-Clark Australia Pty Limited

Address: Level 4, 100 Arthur St, North Sydney, NSW 2060

Email Address: **[Redacted – Confidential]**

Phone number: **[Redacted – Confidential]**

Attention: **[Redacted – Confidential]**

**With a copy sent to:**

Name: Allens

Address: Level 28, 126 Phillip Street, Sydney NSW 2000

Email Address: Felicity.McMahon@allens.com.au

Phone number: +61 2 9230 5242

Attention: Felicity McMahon

18.3. If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).

18.4. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

**Change of contact details**

18.5. Kimberly-Clark must notify the ACCC of a change to its contact details within three Business Days.

18.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 18.3 and 18.4, will be taken to be received.

## 19. Defined terms and interpretation

**Definitions in the Dictionary**

19.1. A term or expression starting with a capital letter:

(a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or

(b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

**Interpretation**

19.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

## Executed as an Undertaking

Executed by Kimberly-Clark Australia Pty Limited (ACN 000 032 333) pursuant to section 127(1) of the *Corporations Act 2001* by:

| | | |
|---|---|---|
| | | |
| Signature of director | | Signature of director |
| David Walker | | Belinda Driscoll |
| Name of director (print) | | Name of director (print) |
| | | |
| Date | | Date |

Executed by Kimberly-Clark Corporation by:

Signature:

Signatory name: Courtney Roane

Title: Vice President, Deputy General Counsel & Corporate Secretary

Date:

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

---

Date

and signed on behalf of the Commission:

---

Chair

---

Date

# Schedule 1 – Dictionary and interpretation

## 1. Dictionary

**ACCC** means the Australian Competition and Consumer Commission.

**Act** means the *Competition and Consumer Act 2010* (Cth).

**Agreements** means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

**Approved Audit Plan** means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Auditor will audit and report upon compliance with this Undertaking.

**Approved Business Sale Agreement** means the standard form contract for the divestiture of the Unsold Business which has been approved by the ACCC in accordance with the terms of this Undertaking.

**Approved Divestiture Agent** means the person approved by the ACCC and appointed under clause 10 of this Undertaking.

**Approved Independent Auditor** means the person approved by the ACCC and appointed under clause 9 of this Undertaking.

**Approved Independent Manager** means the person approved by the ACCC and appointed under clause 8 of this Undertaking.

**Approved Marketing and Sale Plan** means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Divestiture Agent will market and effect the divestiture of the Unsold Business.

**Approved Purchaser** means the person approved by the ACCC under clause 6 of this Undertaking.

**Approved Sale and Purchase Agreement** means the contract approved by the ACCC in accordance with the terms of this Undertaking, by which Kimberly-Clark will divest the Divestiture Business to the Approved Purchaser and the Approved Purchaser will acquire the Divestiture Business from Kimberly-Clark.

**Approved Separation and Management Plan** means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Manager will:

(a) separate the Divestiture Business from any business to be retained by Kimberly-Clark; and
(b) manage and operate the Divestiture Business independently of Kimberly-Clark and any retained business.

**Approved Transitional Supply Agreement** means any agreement, for the supply of goods or services (other than Technical Assistance) by Kimberly-Clark to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

**Approved Transitional Technical Assistance Agreement** means any agreement, for the supply of Technical Assistance by Kimberly-Clark to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

**Approved Terms of Appointment** means the terms of appointment for the Approved Independent Manager, Approved Independent Auditor or Approved Divestiture Agent, as applicable, as approved by the ACCC in accordance with the terms of this Undertaking.

**Associated Entity** has the meaning given by section 50AAA of the Corporations Act.

**Audit Report** has the meaning given to it in clause 9.12 of this Undertaking.

**Business Day** means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

**Change of Control** means:

(a) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Kimberly-Clark to any other person or entity that may impact compliance with this Undertaking in its entirety; or
(b) the sale or transfer of any assets necessary, or which may be necessary, to enable Kimberly-Clark to continue to comply with this Undertaking in its entirety.

**Commencement Date** means the date described in clause 3.1 of this Undertaking.

**Control Date** means the date on which the Proposed Acquisition is completed.

**Consents** means any Government Consents or Third Party Consents.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Divestiture Business** means the items described in Schedule 4 to this Undertaking.

**Entities Connected** has the meaning given by section 64B of the Corporations Act.

**Establishment Audit** has the meaning given to it in clause 9.13(a) of this Undertaking.

**Government Consents** means any consents from any government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approvals or contracts required for the operation of the Divestiture Business.

**Holding Company** has the meaning given by section 9 of the Corporations Act.

**Initial Sale Period** is defined in Confidential Schedule 5 to this Undertaking.

**Kenvue** means the entity referred to in clause 2.2 of this Undertaking.

**Kimberly-Clark** means the entities referred to in clause 1.1 of this Undertaking.

**Kimberly-Clark Australia Pty Limited** means Kimberly-Clark Australia Pty Limited (ACN 000 032 333).

**Kimberly-Clark Corporation** means Kimberly-Clark Corporation, a Delaware corporation headquartered in Irving, Texas, United States.

**Material Change** means any change to the structure, attributes, extent or operations of the Divestiture Business or products or services sold by the Divestiture Business that may affect, or impact on, the competitiveness of the Divestiture Business.

**Material Contract** means any Agreement that is necessary for the operation of the Divestiture Business.

**Proposed Acquisition** is defined in clause 2.3 of this Undertaking.

**Proposed Divestiture Agent** means a person named in a Proposed Divestiture Agent Notice.

**Proposed Divestiture Agent Notice** has the meaning given to it in clause 10.3 of this Undertaking.

**Proposed Independent Auditor** means a person named in a Proposed Independent Auditor Notice.

**Proposed Independent Auditor Notice** has the meaning given to it in clause 9.2 of this Undertaking.

**Proposed Independent Manager** means a person named in a Proposed Independent Manager Notice.

**Proposed Independent Manager Notice** has the meaning given to it in clause 8.2 of this Undertaking.

**Proposed Purchaser** means a person named in a Proposed Purchaser Notice.

**Proposed Purchaser Notice** has the meaning given to it in clause 6.2 of this Undertaking.

**Proposed Undertaking Appointment** means a Proposed Independent Manager, Proposed Independent Auditor or Proposed Divestiture Agent.

**Public Mergers Register** means the ACCC's public register of merger clearances, available at www.accc.gov.au.

**Public Section 87B Undertakings Register** means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

**Related Bodies Corporate** has the meaning given to it by section 50 of the Corporations Act.

**Related Entities** has the meaning given to it by section 9 of the Corporations Act.

**Related Parties** has the meaning given to it by section 228 of the Corporations Act.

**Subsidiary** has the meaning given by section 9 of the Corporations Act.

**Technical Assistance** includes advising on technical knowledge documentation, supporting the Approved Purchaser on acquiring specific assets necessary for the ongoing conduct of the Divestiture Business, providing staff with suitable experience and skills to assist and/or advise on technical issues, assisting in training for the Approved Purchaser's staff, and providing guidance on regulatory and legal aspects relating to the transfer of or application for licences.

**Third Party Consents** means any Consent from any entity that is not a government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approvals or contracts required for the operation of the Divestiture Business.

**Transferred Personnel** has the meaning given to it in clause 5.7 of this Undertaking.

**Undertaking** is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

**Undertaking Appointment** means the Approved Independent Manager, the Approved Independent Auditor or the Approved Divestiture Agent, as applicable.

**Unsold Business** has the meaning given to it in clause 10.1 of this Undertaking.

## 2. Interpretation

2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

(a) a reference to this Undertaking includes all of the provisions of this document including its schedules;

(b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;

(c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;

(d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

(e) a reference in this Undertaking to any company includes its Related Bodies Corporate;

(f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;

(g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;

(h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;

(i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;

(j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular.

(k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;

(l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;

(m) material not forming part of this Undertaking may be considered to:

(i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or

(ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;

(n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:

(i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and

(ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;

(o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;

(p) in performing its obligations under this Undertaking, Kimberly-Clark will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;

(q) a reference to:

(i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;

(ii) a party includes its successors and permitted assigns; and

(iii) a monetary amount is in Australian dollars.

# Schedule 2 – Proposed Purchaser Notice Form

This form sets out the information required by the ACCC in relation to a Proposed Purchaser.

Please note that it is an offence under section 137.1 of the Criminal Code Act 1995 (Cth) to give information to a Commonwealth entity knowing that the information is false or misleading or omits any matter or thing without which the information is misleading.

## 1. Method of Delivery to the ACCC

The completed form with requested documents attached should be provided to the ACCC using the following method:

**Email**

| | |
|---|---|
| Subject line: | Proposed Purchaser Notice – Undertaking provided by Kimberly-Clark |
| Address: | mergers@accc.gov.au |
| Attention: | Executive General Manager – Mergers and Exemptions Assessment Division |

With an email copy sent to:

| | |
|---|---|
| Address: | mergersru@accc.gov.au |
| Attention: | Director, Remedies Unit – Merger Surveillance & Coordination Branch, Mergers and Exemptions Assessment Division |

## 2. Information Required

The ACCC requires the following information in order to assess a Proposed Purchaser.

2.1 Proposed Purchaser details:

(a) Name of the Proposed Purchaser;

(b) Address;

(c) Contact name;

(d) Telephone number;

(e) Other contact details.

2.2 A submission containing the following information:

(a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business;

(b) details of the Proposed Purchaser's experience in the relevant market(s);

(c) the names of the owner(s) and the director(s) of the Proposed Purchaser;

(d) details of any of the following types of relationships between Kimberly-Clark and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:

(i) Kimberly-Clark and the Proposed Purchaser are Associated Entities;

(ii) Kimberly-Clark is an Entity Connected with the Proposed Purchaser;

(iii) the Proposed Purchaser is an Entity Connected with Kimberly-Clark;

(iv) Kimberly-Clark and the Proposed Purchaser are Related Entities;

(v) Kimberly-Clark and the Proposed Purchaser are Related Parties;

(vi) any Related Party, Related Entity or Entity Connected with Kimberly-Clark is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;

(vii) Kimberly-Clark and the Proposed Purchaser have a contractual relationship or had one within the past three years, other than those attached to this form;

(viii) the Proposed Purchaser is a supplier of Kimberly-Clark or has been in the past three years;

(ix) Kimberly-Clark is a supplier of the Proposed Purchaser or has been in the past three years; and

(x) any other relationship between Kimberly-Clark and the Proposed Purchaser that allows one to affect the business decisions of the other;

(e) a section addressing the following factors, including any information adverse to the Proposed Purchaser, in the power, possession or control of Kimberly-Clark:

(i) whether the draft sale and purchase agreement is consistent with this Undertaking;

(i) whether the Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;

(ii) whether the Proposed Purchaser is of good financial standing;

(iii) whether the Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;

(iv) whether the Proposed Purchaser is able to conduct the Divestiture Business effectively;

(v) whether the divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including any relationships (including but not limited to shareholding interests, other proprietary interests, contracts, arrangements or understandings) between the Proposed Purchaser and other entities in a relevant market, and the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser; and

(vi) any other matters that may affect the Proposed Purchaser's capacity or ability to acquire or operate the Divestiture Business, such as outstanding legal action or disputes.

2.3 Please also attach to this form:

(a) the finalised draft of the sale and purchase agreement for approval by the ACCC in accordance with this Undertaking.

(b) the finalised draft of any transitional technical assistance agreement for approval by the ACCC in accordance with this Undertaking.

(c) the finalised draft of any transitional supply agreement for approval by the ACCC in accordance with this Undertaking.

(d) any documents required to support the information provided by Kimberly-Clark pursuant to this form.

# Schedule 3 – Proposed Undertaking Appointment Form

This form sets out the information required by the ACCC in relation to the proposed appointment of the following positions under the Undertaking:

- Proposed Independent Manager;
- Proposed Independent Auditor; or
- Proposed Divestiture Agent

(the **Undertaking Appointment).**

This form is to be used for each of the above appointments.

Please note that it is an offence under section 137.1 of the Criminal Code Act 1995 (Cth) to give information to a Commonwealth entity knowing that the information is false or misleading or omits any matter or thing without which the information is misleading.

## 1. Method of Delivery to the ACCC

The completed form with requested documents attached may be provided to the ACCC using the following method:

**Email**

| | |
|---|---|
| Subject line: | Proposed [Only include relevant Undertaking Appointment i.e. Independent Manager/Independent Auditor/Divestiture Agent] Notice – Undertaking provided by Kimberly-Clark |
| Address: | mergers@accc.gov.au |
| Attention: | Executive General Manager – Mergers and Exemptions Assessment Division |

With an email copy sent to:

| | |
|---|---|
| Address: | mergersru@accc.gov.au |
| Attention: | Director, Remedies Unit – Merger Surveillance & Coordination Branch, Mergers and Exemptions Assessment Division |

## 2. Information Required

The ACCC requires the following information in order to assess a proposed Independent Manager, Independent Auditor or Divestiture Agent (i.e. the relevant Undertaking Appointment).

2.1 Proposed Undertaking Appointment details:

(a) the name of the Proposed Undertaking Appointment; and

(b) the name of the proposed Undertaking Appointment's employer and contact details including:

(i) Address;

(ii) Contact name;

(iii) Telephone number;

(iv) Other contact details.

2.2 A submission containing the following information:

(a) details of the Undertaking Appointment's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking;

(b) the names of the owner(s) and the director(s) of the Undertaking Appointment's employer;

(c) details of any of the following types of relationships between Kimberly-Clark and the Undertaking Appointment or the Undertaking Appointment's employer or confirmation that no such relationship exists whether within Australia or outside of Australia:

(i) Kimberly-Clark and the Undertaking Appointment's employer are Associated Entities;

(ii) Kimberly-Clark is an Entity Connected with the Undertaking Appointment's employer;

(iii) the Undertaking Appointment's employer is an Entity Connected with Kimberly-Clark;

(iv) Kimberly-Clark and the Undertaking Appointment's employer are Related Entities;

(v) Kimberly-Clark and the Undertaking Appointment's employer are Related Parties;

(vi) any Related Party, Related Entity or Entity Connected with Kimberly-Clark is a Related Party, Related Entity or Entity Connected with the Undertaking Appointment;

(vii) Kimberly-Clark and the Undertaking Appointment or the Undertaking Appointment's employer have a contractual relationship or had one within the past three years, other than those attached to this form;

(viii) the Undertaking Appointment's employer is a supplier of Kimberly-Clark or has been in the past three years;

(ix) Kimberly-Clark is a supplier of the Undertaking Appointment's employer or has been in the past three years; and

(x) any other relationship between Kimberly-Clark and the Undertaking Appointment or the Undertaking Appointment's employer that allows one to affect the business decisions of the other;

(d) details of any existing or past contractual relationships between the Undertaking Appointment or the Undertaking Appointment's employer and the ACCC within the past three years.

2.3 A document outlining the terms of appointment for the proposed Undertaking Appointment. This should identify the basis on which fees will be paid, including disclosure of any proposed performance-based fees.

## 3. Specific Information required for Proposed Undertaking Appointments

The ACCC requires the below information in relation to the relevant Undertaking Appointment.

***Proposed Independent Auditor***

3.1 A finalised draft audit plan for the Divestiture Business, in an editable format, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans regarding the Establishment Audit and the Audit Report.

***Proposed Divestiture Agent***

3.2 The finalised draft business sale agreement drafted by the Proposed Divestiture Agent in consultation with Kimberly-Clark, in an editable format. The draft business sale agreement is to provide for the divestiture of the Unsold Business.

3.3 The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Business, in an editable format.

***Proposed Independent Manager***

3.4 The finalised draft separation and management plan for the Divestiture Business, in an editable format, detailing the measures and timing to be implemented by Kimberly-Clark and the Approved Independent Manager in order to fulfil Kimberly-Clark's and the Approved Independent Manager's obligations pursuant to this Undertaking. This plan is to be drafted by the Proposed Independent Manager in consultation with Kimberly-Clark to achieve the objectives of the Undertaking including:

(a) the intended mode of operation of the Divestiture Business until completion of its divestiture;

(b) separation measures to ensure the Divestiture Business is operated in a manner which is financially and operationally separate from Kimberly-Clark, including the;

(i) separation of the books and records of the Divestiture Business from those of Kimberly-Clark;

(ii) severance of the Divestiture Business's participation in any private shared information technology networks, to the extent possible without compromising the viability of the Divestiture Business;

(iii) implementation of specific electronic, information and physical security measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Business; and

(iv) severance of arrangements to share personnel and plant between the Divestiture Business and any businesses to be retained by Kimberly-Clark, to the extent possible without compromising the viability of the Divestiture Business;

(c) details of contracts for the provision of goods or services to the Divestiture Business which will expire after the completion of the divestiture of the Divestiture Business to the Approved Purchaser and the actions which will be taken to ensure they are replaced, renewed and/or renegotiated on commercial terms favourable to the Divestiture Business;

(d) personnel planning to maintain appropriate personnel levels and ensure that the Divestiture Business has access to all personnel necessary to operate the Divestiture Business;

(e) any Material Changes to the Divestiture Business required in order to fulfil Kimberly-Clark's and the Approved Independent Manager's obligations pursuant to the Undertaking;

(f) the cooperation required from the Approved Independent Manager with Kimberly-Clark in relation to the divestiture of the Divestiture Business, including:

(i) the activities to be conducted by the Approved Independent Manager that are necessary for the effective operation of the Divestiture Business, having regard to the nature of the Divestiture Business (including the extent to which the Divestiture Business already has a management structure in place prior to the Proposed Acquisition that will be retained during the hold separate period);

(ii) the method by which due diligence information, site visits and personnel interviews by and to prospective purchasers of the Divestiture Business will be managed;

(iii) the method by which the Approved Independent Manager and Kimberly-Clark will preserve the confidentiality of the Divestiture Business's competitively sensitive information from Kimberly-Clark and its advisers throughout this process; and

(iv) a protocol whereby the Approved Independent Manager can provide any information requested by Kimberly-Clark without disclosing the details of the Divestiture Business's competitively sensitive information to Kimberly-Clark.

# Schedule 4 – Divestiture Business

<table>
<tr><td>Divestiture Business</td><td>The Divestiture Business comprises Kenvue Inc.'s feminine hygiene business in Australia and New Zealand, including all accompanying assets, licences, agreements and other tangible and intangible property listed in this Schedule 4, to the extent required to facilitate the operation of the Divestiture Business in Australia and New Zealand.</td></tr>
<tr><td>Intellectual Property</td><td>All intellectual property required to facilitate the operation of the Divestiture Business in Australia and New Zealand will be transferred to the Approved Purchaser, including as identified below.<br><br>Trade marks<br><table><tr><th>Trade mark</th><th>Trade mark number</th></tr><tr><td>ALOESILK</td><td>1086009</td></tr><tr><td>BARELY THERE</td><td>932796</td></tr><tr><td>BODYFLEX</td><td>1173424</td></tr><tr><td>CAREFREE</td><td>183733</td></tr><tr><td>CAREFREE</td><td>351885</td></tr><tr><td>CAREFREE & PETAL DESIGN</td><td>287150</td></tr><tr><td>CAREFREE ACTI-FRESH</td><td>1238544</td></tr><tr><td>CAREFREE ALOE LOGO</td><td>1171088</td></tr><tr><td>CAREFREE AND FLOWER DESIGN</td><td>879824</td></tr><tr><td>CAREFREE BREATHABLE</td><td>836046</td></tr><tr><td>CAREFREE COMFORT</td><td>773418</td></tr><tr><td>CAREFREE FLOWER DESIGN</td><td>871388</td></tr><tr><td>CAREFREE PETALS DESIGN</td><td>733884</td></tr><tr><td>CAREFREE PROCOMFORT</td><td>1374972</td></tr><tr><td>DRY-MAX</td><td>1087148</td></tr><tr><td>DRYFLEX</td><td>1278194</td></tr><tr><td>DYNAMIC FIT</td><td>1758139</td></tr><tr><td>FEELS LIKE A LINER, PROTECTS LIKE A PAD</td><td>1279814</td></tr><tr><td>FLEXIA</td><td>1131750</td></tr><tr><td>FLEXIFORM</td><td>909924</td></tr></table></td></tr>
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|---|---|
| FLUID-LOCK | 1142632 |
| FORMFLEX | 2381825 |
| FOUR WALL PROTECTION | 762326 |
| FREEFIT | 1629816 |
| FREESTYLE | 1076343 |
| GO-ACTIVE | 1857999 |
| IT'S MY BODY | 1359155 |
| NEXT-TO-NOTHING | 1199784 |
| OPTIBALANCE | 1240147 |
| OUR MOVE TO PROGRESS | 1995334 |
| OXYGEN FRESH | 1219256 |
| PAD PROTECTION, LINER COMFORT | 1279810 |
| PIZZAZZ | 531120 |
| QWIK-DRY | 1086010 |
| SILK-EASE | 956123 |
| SILKTOUCH | 923357 |
| SIMPLY FRESH | 1171087 |
| SOFTFOLDS | 1141987 |
| STAYFREE | 604262 |
| STAYFREE | 243886 |
| STAYFREE BUTTERFLY LOGO | 1101193 |
| STAYFREE COMPACTS | 443511 |
| STAYFREE MAXI-PADS | 289217 |
| STAYFREE MINI-PADS | 289216 |
| STAYFREE PERFECT FIT | 1421087 |
| STAYFREE PERFECT FIT AND DESIGN | 1421086 |
| STAYFREE PRIMA | 677121 |
| STAYFREE STAYFRESH | 1803490 |
| SURE & NATURAL | 528596 |
| SWEET DREAMS | 1378545 |
| THERMO CONTROL & DESIGN | 1309083 |
| THERMOCONTROL | 1295776 |

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|---|---|
| TRIPLEFRESH | 997195 |
| UNDIEFEEL | 1392500 |
| ACTIVE-FIT | 1068954 |
| ALOESILK | 738702 |
| CAREFREE | 276904 |
| CAREFREE | 1251726 |
| CAREFREE ACTI-FRESH | 787847 |
| CAREFREE ALOE LOGO | 765925 |
| CAREFREE AND FLOWER DESIGN | 640433 |
| CAREFREE BASICS | 234317 |
| CAREFREE BREATHABLE | 620062 |
| CAREFREE FLOWER DESIGN | 640311 |
| CAREFREE PANTY SHIELDS | 116911 |
| CAREFREE PERFECT FIT | 677910 |
| CAREFREE PETALS DESIGN | 276617 |
| CAREFREE PROCOMFORT | 826358 |
| CLOSEFIT TECHNOLOGY (SERIES OF 2) | 998228 |
| DRY-MAX | 738732 |
| DRYFLEX | 799447 |
| DYNAMIC FIT | 1062705 |
| FEELS LIKE A LINER, PROTECTS LIKE A PAD | 799976 |
| FLEXIA | 753825 |
| FLUID-LOCK | 757558 |
| FORMFLEX | 1245251 |
| FOUR WALL PROTECTION | 292489 |
| FREEFIT | 1000018 |
| FREESTYLE | 735857 |
| GO-ACTIVE | 1071188 |
| IT'S MY BODY | 823289 |
| MICROFRESH PEARLS | 679318 |
| ODASORB | 232099 |
| OPTIBALANCE | 788592 |

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|---|---|
| OUR MOVE TO PROGRESS | 1115838 |
| OXYGEN FRESH | 781951 |
| PAD PROTECTION, LINER COMFORT | 799971 |
| SILK EASE | 711119 |
| SOFTFOLDS | 757470 |
| STAYFREE | 103596 |
| STAYFREE BUTTERFLY LOGO | 742270 |
| STAYFREE DAISY & BAND DSN. | 167166 |
| STAYFREE PERFECT FIT | 840568 |
| STAYFREE PERFECT FIT AND DESIGN | 840569 |
| STAYFREE QWIK-DRY | 749459 |
| STAYFREE STAYFRESH | 730938 |
| SUREFIT | 264462 |
| SWEET DREAMS | 829047 |
| THERMO CONTROL & DESIGN (SERIES OF 2) | 809165 |
| THERMOCONTROL | 805369 |
| TOTAL CARE SYSTEM | 818580 |
| TRIPLEFRESH | 710095 |
| UNDIEFEEL | 832797 |

**Patents**

| Patent name | Patent number |
|---|---|
| Printed design for release paper for a sanitary absorbent article | 201615456 |
| Printed design for release paper for a sanitary absorbent article | 201617375 |
| Printed pattern for sanitary product | 201714676 |
| Sanitary product | 201716511 |
| Sanitary product | 201716512 |
| Sanitary product | 201716513 |
| Feminine absorbent articles with bonded side flaps and an apparatus for producing the same | 2018244460 |

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|---|---|---|
| | Folded individual article in a circular package | 2018291097 |
| | Folded individual article in a circular package | 2018291098 |
| | A potential design patent for absorbent articles | 201915353 |
| | A potential design patent for absorbent articles | 201915352 |
| | A potential design patent for absorbent articles | 201917347 |
| | A potential design patent for absorbent articles | 201917353 |
| | A potential design patent for absorbent articles | 201917355 |
| | Printed design for release paper for a sanitary absorbent article | 202117085 |
| | Printed design for release paper for a sanitary absorbent article | 202212517 |
| | Absorbent article barrier layer | 2023415987 |
| | Absorbent article including a buffer composition | 2012225832 |
| | Fibrous absorbent material | 2017201426 |
| | Method for Making a Fibrous Absorbent Material | 2012216711 |
| | Resilient absorbent composite material | 2018250403 |
| | Absorbent article including resilient absorbent composite material | 2012216713 |
| | Article and method for maintaining menstrual fluid within the vagina | 2014402434 |
| | Absorbent article demonstrating controlled deformation and longitudinal fluid distribution | 2015224438 |
| | Absorbent article demonstrating controlled deformation and longitudinal fluid distribution | 2015224434 |
| | Absorbent article demonstrating deformation and longitudinal fluid distribution | 2015224442 |

| | | |
|---|---|---|
| | Absorbent article demonstrating controlled deformation and longitudinal fluid distribution | 2015224444 |
| | Absorbent article demonstrating controlled deformation and longitudinal fluid distribution | 2015224446 |
| | Absorbent article demonstrating controlled deformation and longitudinal fluid distribution | 2015224433 |
| | Sanitary napkin | 202419548 |
| | Sanitary napkin | 202419547 |
| | Tampon with penetrating groove segments | 2013231154 |
| | Tampon with extended groove forms | 2013231156 |
| | Tampon with continuous groove forms | 2013231155 |
| | Method of shaping a tampon for feminine hygiene | 2020202670 |
| | Method of shaping a tampon for feminine hygiene | 2015346420 |
| | Tampon test method and apparatus | 2015261717 |
| | Method of forming primary package tube for tampons | 2016381487 |
| | Method of winding up tampon material | 2022202564 |
| | Method of winding up tampon material | 2016381489 |
| | Catamenial tampon | 201617108 |
| | Catamenial tampon | 201711450 |
| | Catamenial tampon | 201711452 |
| | Catamenial tampon | 201711453 |
| | Tampon press jaws | 2018277255 |
| | Tampon press and shaped tampon | 2020354523 |
| | Apparatus for forming a catamenial tampon | 2020354525 |
| | Tampon for feminine hygiene | 2025203354 |
| | Tampon for feminine hygiene | 2019452220 |
| | Tampon overwrap | 2016202753 |
| | Tampon overwrap | 2009319871 |

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|---|---|
| Sealing pattern for tampon overwrap | 2014203444 |
| Sealing pattern for tampon overwrap | 2009319873 |
| Tampon formed from a selectively needled nonwoven fabric web | 2010224393 |
| Personal hygiene product with a digital element | 2016201054 |
| Personal hygiene device for detecting a fluid | 2019323802 |
| Connectors and encasement for personal hygiene product with a digital element | 2018236754 |
| Pre-filled applicator device | 2015252139 |
| Pre-Filled Applicator Device | 2009217412 |
| Pre-Filled Applicator Device | 579803 |

**Domain names**

| Domain names |
|---|
| becarefree.au |
| becarefree.com.au |
| carefree.au |
| carefree.net.au |
| carefreeliners.au |
| carefreeliners.com.au |
| carefreeonamission.com.au |
| carefreetampons.au |
| carefreetampons.com.au |
| mycarefree.au |
| mycarefree.com.au |
| stayfree.au |
| stayfree.com.au |
| becarefree.co.nz |
| becarefree.nz |
| carefreeliners.co.nz |
| carefreeonamission.co.nz |

<table>
<tr><td></td><td>
<table>
<tr><td>carefreetampons.co.nz</td></tr>
<tr><td>mycarefree.co.nz</td></tr>
<tr><td>mystayfree.co.nz</td></tr>
<tr><td>stayfree.co.nz</td></tr>
<tr><td>stayfree.nz</td></tr>
</table>
Global trademarks
The Approved Purchaser will be bound by, whether by becoming a party to, or otherwise agreeing in writing to be bound by and comply with the terms of, the following world-wide trademark agreements for Kenvue's Stayfree and Carefree brands for use in Australia and New Zealand:
<table>
<tr><th>Trademark Agreement Name</th><th>Case Reference</th></tr>
<tr><td>STAYFREE AND BUTTERFLY LOGO</td><td>CONSTAMAG2748</td></tr>
<tr><td>CAREFREE</td><td>CONS131600OOO001</td></tr>
</table>
All books, records and files relating to the prosecution and maintenance of the trademarks, patents and domain names referred to above.
</td></tr>
<tr><td>Manufacturing Technology and Marketing Materials</td><td>Kimberly-Clark will license to the Approved Purchaser all know-how relating to the manufacture, marketing and sale of the products in Australia and New Zealand. This includes product specifications, manufacturing processes, marketing materials, packaging and labelling designs, clinical studies, scientific data, product testing reports, claims support, quality information and other materials necessary to operate the Divestiture Business. This licence will be granted to the Approved Purchaser by Kimberly-Clark on a perpetual, irrevocable, fully paid-up, royalty-free, and exclusive basis within Australia and New Zealand.</td></tr>
<tr><td>Business Records</td><td>Kimberly-Clark will transfer all books and records (including all distributors’ and suppliers’ lists, distribution lists, sales and promotional literature and other sales-related materials) that are reasonably separable and are primarily related to, or required for the ownership of, the Divestiture Business.</td></tr>
<tr><td>Inventory</td><td>Inventory of the Divestiture Business in Australia that exists as at the date of completion of the divestiture and not already sold to a third party will be transferred to the Approved Purchaser.</td></tr>
<tr><td>Personnel</td><td>Kimberly-Clark will transfer all employees who are, in the view of the Approved Purchaser, required for the Approved Purchaser to maintain, operate or conduct effectively the Divestiture Business (subject to clauses 5.7 and 5.8).</td></tr>
</table>

# Confidential Schedule 5

**[Redacted – Confidential]**