

18 Jan 2022 | Analysis

Unilever Plan To Grow Consumer Health By Acquisition, Meet US Tightening Of Merger Scrutiny

FTC, DoJ Reviewing Merger Guides Relevant To Deals Across Consumer Product Sector

by [Malcolm Spicer](#)

Unilever, which has had three offers for GSK rebuffed, likely notes that the Federal Trade Commission and Department of Justice signal they will tighten scrutiny of deals that merge companies providing consumer-facing products and services.

The potential for US trade regulators requiring divestment of one or more OTC drug, dietary supplement or other health care brands likely hasn't influenced nor will diminish [Unilever PLC](#)'s interest in acquiring [GlaxoSmithKline plc](#)'s consumer health care product portfolio.

The global marketer of food and beverage lines and health, personal and household care products likely noted on 18 January, though, that the Federal Trade Commission signaled it would tighten its scrutiny of deals that merge companies providing consumer-facing products and services.

The FTC, along with the Department of Justice' Antitrust Division announced "a joint public inquiry aimed at strengthening enforcement against illegal mergers" because recent "evidence indicates that many industries across the economy are becoming more concentrated and less competitive – imperiling choice and economic gains for consumers, workers, entrepreneurs, and small businesses" (*see related story below*).

Unilever currently is best known in the US as the firm behind food brands including Ben & Jerry's ice cream, Hellmann's mayonnaise and Knorr condiments and sauce mixes, and personal care

brands like Axe and Dove soap and deodorants and Vaseline petroleum jelly.

The London-based multinational firm's portfolio also includes dietary supplement brands available in the US, including the SmartyPants children's and Olly simple-label lines.

In those sectors as well as in household care, Unilever markets a larger number of brands outside the US. But in no market is it currently marketing any OTC drug other than oral care products.

Oral care brands among GSK's consumer portfolio, including AquaFresh and Sensodyne, would be added to Unilever's Signal and Pepsodent brands available in the US and other countries and Mentadent available ex-US should Unilever convince GSK to sell the consumer business it manufactures and markets as the majority owner of a joint venture with Pfizer Inc.

The FTC likely would look at the concentration of oral care brands from a potential combining of GSK's consumer business into Unilever.

But across the remainder of OTC drug brands Unilever has made three proposals to add by acquiring GSK's consumer business, it almost certainly wouldn't face anti-trust questions in the US.

OTCs 'Attractive, Adjacent Category'

After reports emerged of GSK's management and board "unanimously" voting to reject its latest bid – £50bn (\$68bn) comprising £41.7bn (\$57bn) in cash and £8.3bn (\$11.3bn) in shares – Unilever on 16 January published, and undated the next day an explanation of its interest in the GSK business, which reported sales of around £9.6bn (\$13.1bn) in 2021. ([#RS152115])

Unilever's beauty and personal care lines accounted for around 40% of its €51bn (€58bn) sales in 2020; the remainder was generated by the foods and refreshment lines and home care products.

Notwithstanding its oral care brands, OTC drugs "would be an attractive adjacent category," says Unilever.

As well, 45% of GSK's consumer health sales are in oral care and supplements, "categories in which Unilever already has presence and substantial capabilities."

Combining the two firms' consumer health lines would "combine Unilever's consumer and branding expertise with GSK Consumer Health's technical OTC capabilities" and "create scale and a growth platform for

Record Number Of Mergers Forces US Regulatory Agencies' Hand On Updating Enforcement Guides

By [Malcolm Spicer](#)

the combined portfolio in the US, China, and India, with further opportunities in other emerging markets,” according to the statement by Unilever’s management and board.

Some current GSK consumer brands probably would be sold if Unilever became owner. The firm’s overall strategy for expanding through acquisition includes divestment plans.

18 Jan 2022 Chairwoman Lina Khan says concerns about impact on consumer product markets from mergers prompted FTC, working with DoJ, to seek public input on modernizing federal merger guidelines to better detect and prevent illegal, anticompetitive deals in current markets. [Read the full article here](#)

It says “major acquisitions should be accompanied by the accelerated divestment of intrinsically lower growth brands and businesses” to “provide funding and enable separation dis-synergies to be offset by acquisition synergies.”

FTC No Stranger To Consumer Health Mergers

Divestments of Rx drug brands as well as numerous other types of consumer-facing products and services to gain FTC’s approvals of mergers attract more attention from consumers as well as investors and industry stakeholder than consumer health brand divestments.

The FTC doesn’t grant passes without scrutiny, though, when mergers are proposed involving OTC drug and other consumer health manufacturers and markets.

GSK has experienced FTC’s anticompetitive oversight with its own consumer health market moves. As it acquired [Novartis AG](#)’s consumer health portfolio in 2014 for a JV the two firms launched, GSK agreed to divest Novartis’ Habitrol nicotine replacement therapy patch to clear the FTC’s review. (Also see "[Industry News Roundup](#)" - HBW Insight, 25 Nov, 2014.)

The agency said allowing the firms to operate the JV with Habitrol and GSK’s Nicoderm CQ NRT patch would likely be anticompetitive. As Novartis and GSK marketed the only two branded nicotine patches available in the US and were two of the three companies that supply private label patches to retailers. (Also see "[Edgewell Without Harry’s: Strategic Path Remains The Same, Just A Longer Road Now](#)" - HBW Insight, 10 Feb, 2020.)

More recently, [Procter & Gamble](#), which owns the Gillette and Venus shaving product brands, in January 2021 backed away from acquiring women’s razor and body-care company Billie Inc. after the FTC filed a complaint seeking to block the deal due to anti-trust concerns. (Also see "[P&G Abandons Billie Acquisition; Coty Board Changes; Beauty News In Brief](#)" - HBW Insight, 8 Jan, 2021.)

Edgewell Personal Care Co.'s deal to acquire Billie announced in November didn't spur FTC action. However, Edgewell in February 2020 cancelled its planned purchase of razor firm Harry's Inc. after the federal agency objected. (Also see "[Edgewell Cuts \\$310m Billie Deal Without FTC Incident](#)" - HBW Insight, 30 Nov, 2021.)

Protecting competition in the personal care products sector also influenced P&G when it closed its merger with Gillette Co. in 2005. The year before it had launched with Phillips a JV to market a product that incorporated Philips' brush technology with a P&G toothpaste formulation. However, P&G pulled out of the JV because Gillette made Oral-B brushes. (Also see "[P&G \\$57 Bil. Gillette Acquisition Creates 21 Billion-Dollar Brand Portfolio](#)" - HBW Insight, 31 Jan, 2005.)

Divesting Rx brands also has been required by the FTC in mergers of consumer health businesses – at least, in Mylan NV's proposed merger with [Perrigo Company PLC](#) via a hostile takeover.

In 2015, Mylan management agreed with the FTC that, if the takeover succeeded, it would divest to Alvogen Group Inc. its production of OTC laxative ingredient polyethylene glycol 3350; to sell three Rx ingredients; and not to enter three other Rx ingredient markets should its tender succeed. (Also see "[Court Keeps Hands Off Perrigo Tender; Under FTC Agreement, Mylan To Hand Off Ingredients](#)" - HBW Insight, 9 Nov, 2015.)

Although Mylan's offer eventually was rejected by Perrigo's shareholders, Perrigo faced securities fraud complaints from some investors alleging it misled them about the proposed deal. (Also see "[Perrigo Haunted By Mylan Rejection As Securities Fraud Complaints Mount](#)" - HBW Insight, 31 Oct, 2018.)

Mylan more recently increased its consumer health footprint by merging in 2020 with with Pfizer's Upjohn off-patent branded and generic unit and relaunching as [Viatris Inc.](#) The FTC required brand divestments from both Mylan and Upjohn before it signed off on the deal. (Also see "[Mylan's Eplerenone Among Seven US Divestments For Viatris](#)" - Generics Bulletin, 3 Nov, 2020.)