

## Commerce Commission ends K-Y and Durex tryst

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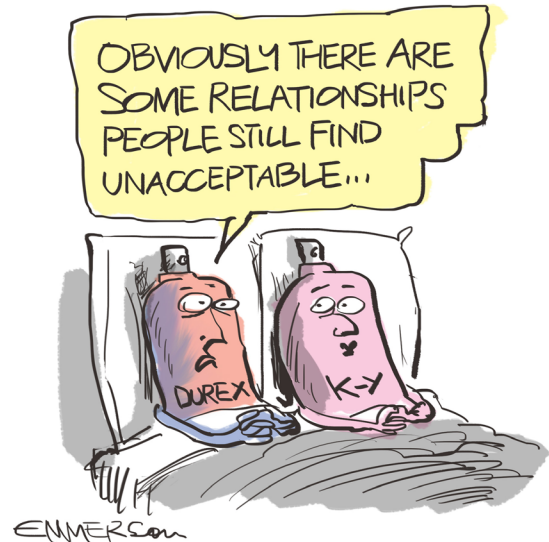
### Speed read

In the four months prior to April 2015, the Commission had declined two clearance applications, one being the acquisition of the Durex lube business by the owners of K-Y lube. The other was a proposed acquisition meaning that three of Wellington's four private hospitals would have a single owner. The lube clearance is notable as it is contrary to clearances granted in most other countries.

Those four months contrast with the history of the Commission, declining only three clearance applications in the previous five years.

The Commission says that, in effect, it's just the way the dice fall, in terms of the multitude of different types of applications it has to consider.

Changing times and approach? Or simply the same approach applied to different facts? The Commission says the latter.



### The Detail

We'll try and minimise the readily available innuendo, sport though it would be, beyond Rod Emmerson's cool cartoon.

The lube clearance application is about Reckitt Benckiser Group's proposed purchase of Johnson & Johnson's K-Y brand and product assets. Reckitt has the K-Y brand. Most countries' regulators approved this global acquisition, but not New Zealand.

NZ is different, *said the regulator*, mainly because Durex and K-Y dominate the supermarket shelves:

*"Acquiring K-Y to go with its Durex brand meant the two leading personal lubricant brands would come under the same*

*ownership. In our view, price increases in supermarkets and pharmacies could not be ruled out as a direct result of approving this merger..... [T]he New Zealand market is unique due to its size and lack of suppliers."*

The Commission notes that the UK regulator has come to similar provisional views, outlined [here](#).

The other matter involved combining three of the four private hospitals in Wellington under one owner, but there was a geographic problem. Boulcott, Bowen and Wakefield Hospitals would have the same owner, leaving only Southern Cross Hospital as independent (all a tad ironic, given the huge slice of the medical insurance market that Southern Cross has with its vertical

Commerce Commission  
ends K-Y and Durex trust

integration, but we digress, as this is about hospitals). Regarding this, the Commission *says*:

*"The competition implications came down to specific services. Connor and its parent company, Evolution Healthcare, would have been the only significant provider in the greater Wellington region for certain surgical procedures. Medical insurance providers would have one less option when trying to get the best price for procedures like orthopaedic hips and knees and gastroscopy. We also didn't believe Southern Cross Hospital would be able to expand to a sufficient extent to replace that lost competition."*

This was ultimately sorted by an altered clearance in which Evolution divested shares in Connor after the takeover of Acurity, so that the ownership status quo remained.

The applicants headed off to court seeking re-visitation of the first application, but they have since withdrawn this court action.

Some will say there are changes afoot at the Commission as to how they deal with clearance applications, but the Commission doesn't agree. As it says *here*:

*"There has been no change in our approach. Nor are the legal thresholds being applied more rigidly than in the past. To put it simply, it is a coincidence that we received these two applications in close proximity to each other, and that each of them left us unsatisfied about the competition implications. But these cases do provide a useful illustration of some of the reasons why we will decline clearance applications after thoroughly assessing the relevant markets."*

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