

# 5 Views of the main parties

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## **Introduction**

5.1. This chapter summarizes the views of the main parties provided in written submissions and at hearings.

### **The views of Coloplast A/S**

#### ***Rationale for the transaction***

5.2. The proposal for the acquisition by Coloplast of SSL's continence care business prepared for Coloplast by J P Morgan in August 2001 identified the rationale for this transaction as being:

- the elimination of a competitor;
- the acquisition of [§] products;
- the acquisition of an additional sales force; and
- the acquisition of a [§] community sales channel.

Coloplast's own rationale as stated in evidence highlighted the following four points:

- (a) It considered itself good at manufacturing and creating new, innovative continence care products. It claimed to have an excellent record in that regard and believed the acquisition gave it the opportunity to take on an existing first class range of SSL products and add them to its European strategy. In other words, it was able to do what SSL could not: it had the infrastructure within its European strategy to sell the former SSL products across Europe.
- (b) It had a heavy commitment to R&D. It evaluated new products as a matter of course and had taken on an excellent range from SSL, which had the potential for further development. There were a number of products to which it could add value through innovation and increase their competitiveness.
- (c) It considered itself to be good at understanding the European market in terms of the needs of the incontinent patient and employed many processes across Europe involving healthcare professionals generally, and nurses in particular, who were totally committed to continence care. It believed the SSL acquisition gave it the opportunity to enhance its strategy of understanding incontinence patients with particular reference to accessing patients through the ThackrayCare nursing dimension of SSL.
- (d) In the last seven or eight years it had intensified its delivery and communication efforts with patients through Coloplast Direct. It believed it had an opportunity to blend the ThackrayCare mail order business and Coloplast Direct and obtain considerable synergies for what was a business in its own right, namely the delivery of products to patients.

5.3. Coloplast expanded on these points by adding that from a UK public interest point of view, it believed that both healthcare professionals and patients would benefit from the acquisition because Coloplast would channel increased funds into R&D. It normally allocated 4 per cent of sales to R&D so the higher turnover resulting from the acquisition would increase the actual amount available for R&D in real terms. It believed that the public interest would also be served by it understanding those needs of continence care patients that had not already been met to a satisfactory degree. It claimed that over the last ten years there had been various examples of innovative products coming out of Coloplast where there was a significant improved quality of life dimension. SpeediCath was a specific example. It was said to be Coloplast's quest to continue that process so as to give patients who were suffering today a higher quality of life tomorrow. It was also said to be an explicit goal that Coloplast should achieve at least 20 per cent of its turnover from the sale of products that had been introduced within the last four years.

5.4. Regarding the public interest test, Coloplast could find no reason to conclude that this would be badly served by the acquisition. Although it had regarded SSL as a competitor in the continence care field, Coloplast did not believe that this was sustainable in the longer term since continence care was not a core business to SSL. Coloplast believed that for a company to be able to capitalize on investments, it had to have more than just a single country presence. SSL did not have the infrastructure to take it into Europe and therefore operated its continence care business as a sales- and marketing-driven stand-alone unit. Coloplast claimed that despite aggressive marketing, SSL's sales prior to the acquisition were actually declining. Coloplast believed that it had much more commitment than SSL and therefore regarded itself as a more suitable owner for SSL's continence care business.

### ***Market definition***

5.5. Coloplast stated that there were many different types of incontinence, caused by a range of medical conditions. While different therapies and treatment products did not all work in the same way, a number of different solutions might be suitable for any particular type of incontinence. In general, medical practitioners' choices were not primarily driven by price. Instead they reflected the patient's needs, abilities and preferences and the substantive view of the medical practitioner. Clinical studies had shown that different medical practitioners might recommend different products for patients with identical medical conditions.

5.6. Coloplast claimed that in terms of product market definition in the shorter term, patients (either at their own initiative or at the recommendation of the healthcare professional) demonstrably switched between reference products. Specifically, for a patient suffering from any particular type of incontinence, a range of different solutions involving different products was available. Further, entirely different forms of therapy might also represent possible solutions.

5.7. It was claimed that over the longer term, the greatest source of demand-side switching between products was likely to result from product innovation. Manufacturers of continence care products were involved in a continual process of product development and improvement.

5.8. On the supply side, Coloplast stated that it would be easy for an existing continence care supplier to switch into the supply of additional products in a relatively short space of time. We were also told that whilst it should be a relatively straightforward process for an existing manufacturer with CE mark certification to gain Drug Tariff approval for a new product, it would be even easier for an existing supplier to move into the distribution of a new product by obtaining it from an existing manufacturer on an OEM basis.

5.9. In the longer term, it was claimed that product innovation was likely to provide a significant constraint on strategic behaviour (as it would do on the demand side).

5.10. Coloplast therefore thought it clear that the relevant product market included all the reference products, but might also be extended to include other incontinence solutions, including treatments based on surgery, physiotherapy, electrotherapy and drugs.

5.11. As regards the development of new surgical procedures, Coloplast noted in particular that a sling procedure had been developed to alleviate female stress incontinence and more recently a male sling procedure had been developed as a treatment for male incontinence caused by prostate surgery. A stent (a small tube-like prosthesis for implanting in urethra) had also been developed to alleviate certain types of urinary retention.

5.12. Geographically, products were said to be made all over the world (with very little production taking place in the UK) and transport costs were claimed to be low. Any supplier to UK customers could acquire high-quality products from outside the UK. On the supply side, Coloplast stated that its competitors operated in a European environment as regards the focus of their R&D, their manufacturing and their distribution networks. The presence of a European CE marking system and the lack of national regulatory barriers also supported the proposition that the market was European. Features that could indicate national, rather than European, markets, such as unequal national market shares, were said to be largely a consequence of history and were diminishing in importance.

5.13. The relevant market was therefore said to be at least EEA-wide plus Switzerland. Coloplast referred to the European Commission's decision in Tyco/C R Bard<sup>1</sup> in support of its view of the geographic market, which found EEA-wide markets for similar products.

### ***Constraints on pricing of current products***

5.14. Coloplast claimed that there were four constraints on pricing. First, with regard to hospital contracts, as in many other medical markets, competition was said to be based on a recognition of the positive link between hospital sales and community sales. Firms bidding for hospital sales were thus sometimes willing to do so on below-average profit levels in the expectation of higher-than-average profits from the community sales. Coloplast further stated that the NHS had considerable buyer power. Competition for such contracts was therefore intense and this limited the profitability of the whole market.

5.15. Second, within the community market there were said to be several UK and EC-based competitors to each of Coloplast's products currently listed on the Drug Tariff. Each represented a competitive threat to Coloplast's market position.

5.16. Third, with regard to the Drug Tariff, it was claimed that notwithstanding the impact of competitors, this constrained the prices that could be achieved by any supplier of community medical products in the UK. Maximum annual price increases were stipulated (based on a GDP deflator) and the acquisition could have no impact whatsoever on this process.

5.17. Fourth, Coloplast highlighted what it described as an entry threat, claiming that a large number of competitor products from other member states could easily be sold in the UK segment of the market, or in other national segments. There were said to be no prohibitive regulations to prevent this and transportation costs were claimed to be minimal. Moreover, the reimbursement system in the UK provided every incentive for wholesalers to import cheaper products. For example, wholesalers could source products from anywhere in Europe. If suppliers did not continue to offer keen prices (via discounts) to wholesalers, there was nothing to stop the wholesaler from importing the same product from another country. Coloplast told us that this was already quite common for some of the larger wholesalers and smaller specialized wholesalers, and the trend would continue as European wholesalers continued to consolidate, and as both the euro and the increased use of e-commerce facilitated such trading.

### ***Barriers to entry***

5.18. Coloplast claimed that entry barriers were low. Specifically it said that the products in the market were relatively simple to make and not protected by patents to such an extent that competitors were not able to manufacture competing products. Coloplast's products were said not to be unique to the UK and their manufacture required no large sunk cost investments. It was further claimed that potential entrants could obtain products in any of the reference categories from existing manufacturers, rather than developing and manufacturing their own products. Also it was easy to get a product listed on to the UK Drug Tariff and other member states' product listings if it already had a CE marking.

5.19. In summary, Coloplast concluded that any attempt by it to raise prices (which the Drug Tariff anyway prevented) would thus simply lead to lower sales and lower profits.

### ***Vertical concern***

5.20. Coloplast argued that there should be no vertical integration concerns regarding its DAC ownership because:

- (a) Continence care products could be obtained from a range of pharmacies and DACs, and Coloplast DACs accounted for only a small proportion of those supplies. There could, therefore, be no concerns over retailing or distribution.

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<sup>1</sup>See footnote to paragraph 2.50.

- (b) Only [88] per cent of Coloplast's urine bag sales and [88] per cent of its sheath sales were dispensed via Coloplast Direct (the Coloplast DAC) in 2000/01.
- (c) Many of its competitors themselves owned DACs. Conversely, a number of suppliers competed successfully without a DAC.
- (d) It was in any event easy to acquire a DAC.
- (e) All DACs were required to supply continence products listed on the Drug Tariff and therefore all continence products specified on each prescription.

5.21. Coloplast also argued that there should be no concerns about the independence of the Thackray nurses who were free to recommend products from any manufacturer. It considered any concern that it might use Thackray nurses to promote Coloplast products to be unfounded for three reasons:

- (a) Thackray nurses provided independent advice based on medical need and this independence was both recognized by the medical profession and valued by the NHS nurses. Coloplast therefore had no intention of compromising this independence, which was in any event safeguarded by the nurses' Code of Professional Conduct. It would not be in Coloplast's commercial interests to compromise its independence.
- (b) The way in which the Thackray nurses gained financially from these services was unrelated to which products were being recommended (they were remunerated on the basis of the number of prescriptions generated), so they had no incentive to promote Coloplast products.
- (c) The scale of those services was insignificant in comparison with the relevant market and it was simply unrealistic to suggest that they could impact on competition within the market.

### ***Innovation and marketing***

5.22. New products were said to be constantly emerging in the global marketplace. It was claimed that suppliers could not afford to sit back and rely on existing products, as healthcare professionals were demanding and all companies strove to innovate. Further, to maintain sales in that environment suppliers had to promote their products. For those reasons, the following forms of competition were said to be of particular significance in this market:

- (a) *Product innovation.* Sales volumes and thus profits were determined by product characteristics such as clinical effectiveness, ease of use, etc. This incentivized suppliers constantly to seek to improve their products and/or to introduce completely different treatments. Not only did this take sales away from other products but it was the only way in which a higher price could be generated on the Drug Tariff (provided the product was more cost effective and/or had more clinical benefits) because a new listing was required. Competition in innovation took place on a global scale between a large number of companies, many of which had substantial resources.
- (b) *Product improvement.* Whilst product innovation might lead to new products or even new categories of products, suppliers were constantly seeking to improve their existing products by discussing the needs of professionals and patients. Subsequent adjustments to product design did not usually require a new listing but could have a dramatic influence on sales volumes, for example the impact of non-latex against latex sheaths or of Coloplast's EasiCath catheter against its SpeediCath version.
- (c) *Sales and marketing.* The main way to sell an existing product was to promote it better. Being listed on the NHS contract or on the Drug Tariff was no guarantee of sales and suppliers were constantly promoting their products. This might include the provision of free samples, discounting heavily to the hospital sector, visits to healthcare professionals, publication of papers, attendance at conferences, advertising and the development of long-term relationships with key institutions and individuals. Strategies in this area could differ markedly and suppliers constantly tried to gain an advantage over each other in order to increase product sales.

5.23. Competition via innovation and marketing was said to be no less intense than competition via pricing. It might mean that measured market shares moved less quickly over time, but it was still consistent with a competitive market. No excess profits were made because they were spent on innovation and marketing. Firms were efficient because cost reduction was the most direct method of increasing profits. Customers got choice because firms competed to provide new products.

5.24. Coloplast considered any concerns that it might rationalize product lines thus leading to a loss of consumer choice to be unfounded. It confirmed that it had no plans to withdraw products other than AquaCath, whose withdrawal had been forced on it by the fire at SSL's Scunthorpe factory. It insisted that product withdrawal was bad for a company's reputation among both users and their continence advisers, and reduced market share. It therefore made little commercial sense except where unavoidable.

### ***Public interest issues/benefits of the acquisition***

5.25. In summary, Coloplast claimed that the acquisition did not create any public interest concerns because:

- (a) It did not create or strengthen a dominant position.
- (b) Coloplast had no intention of raising its average price or reducing the range and quality of its products. Furthermore, the Drug Tariff prevented it from raising prices in the community. In any event it would be uneconomic for Coloplast to attempt such a strategy since it viewed the market as European where uniform strategies with a uniform quality of product was the preferred way of gaining market share.
- (c) Competition in the relevant market was strong and there were low barriers to entry.
- (d) The Drug Tariff, combined with competitive tendering for hospital sales, provided an additional constraint on prices.
- (e) There were no vertical concerns.
- (f) Product innovations were frequent and customers were well served.

5.26. In responding to the CC's Issues Statement of 20 March 2002, Coloplast reiterated that the acquisition would not, at any level of the market, bring about changes that would be significant and adversely impact on competition or the public interest. In amplifying its earlier comments it added that the acquisition would have no adverse impact on:

- (a) *Innovation.* Coloplast pointed out that R&D was carried on at a European, if not global, level and that in common with its competitors it developed continence care products for sale across the EEA as a whole. Coloplast would continue to face active actual competition from a range of existing competitors and potential competition from others.
- (b) *Manufacturing.* Coloplast claimed that this was an international activity and that most manufacturers did not have separate manufacturing facilities in each country into which they made sales. It added that the Medical Devices Directive of 1993 and the CE marking system it introduced harmonized the various national safety and quality provisions and ensured the free movement of continence care products within the EEA.
- (c) *Supplier and product brands.* Coloplast claimed that the acquisition would not impose a supplier or product brand on the UK since decision-makers were informed healthcare professionals with an interest in the functional characteristics of a product as well as its clinical appropriateness. It further claimed that branding provided no value other than for identification purposes and added that products from manufacturers who were new to the UK regularly appeared on the Drug Tariff.
- (d) *Selling to the community.* Coloplast asserted that prices were regulated by the Drug Tariff and that it was not possible to circumvent this price constraint mechanism.

- (e) *Selling to hospitals.* Coloplast pointed out that sales were made by way of a competitive tendering process with several successful bidders being given the right to supply. As a result the NHS could readily counter any threat by Coloplast to raise prices, by calling on another successful bidder to supply. Coloplast thought that any such threats would also be met by retaliation in relation to other products that it sold to hospitals.
- (f) *Portfolio power.* Coloplast claimed that there had been no pre-acquisition portfolio selling and that there was no reason why this should now become attractive or feasible.
- (g) *Selling via a preferred or captive distributor.* Coloplast stressed that the value of Thackray nurses lay in their independence and that to try to fetter this would have no commercial rationale.

### ***Hypothetical remedies***

5.27. The CC invited Coloplast to comment on certain hypothetical remedies listed in the CC's Remedies Statement of 4 April 2002. Coloplast responded by saying that it continued to believe that no public interest detriment would arise and that its comments on the hypothetical remedies put forward by the CC should therefore be viewed in that light. It commented as follows:

#### ***Structural remedies***

- (a) *Divestment of the business acquired from SSL as a whole*

This would be wholly disproportionate to any possible adverse public interest finding the CC might make.

- (b) *Divestment of the sheaths business acquired from SSL*

This too would be wholly disproportionate.

- (c) *Termination of the Coloplast agreement with Mentor*

Although full termination was considered disproportionate, it could be achieved, but with adverse consequences for Coloplast. As well as losing sales revenue, [Details omitted. See note on page iv.] Partial termination/renegotiation could be envisaged with the intention of Mentor continuing to supply to Coloplast either the Clear Advantage sheaths or the Aquadry Freedom/Freedom Plus sheaths, but was considered to be disproportionate. A prohibition on Coloplast carrying out any actions under the Mentor agreement would also be disproportionate as Coloplast would be penalized financially by Mentor for failing to meet the minimum purchase requirements under the agreement, in addition to any claim for damages by Mentor.

- (d) *Divestment of Coloplast's pre-acquisition sheath business*

This was considered to be draconian and disproportionate because Coloplast's sheath operation would comprise only the Simpla sheath (whose sales, according to Coloplast, were in decline) on termination of the Mentor agreement in 2007 (assuming no renewal of agreement).

- (e) *Divestment of ThackrayCare and/or the Thackray nursing service*

This was thought to have no commercial rationale or effect and to be wholly disproportionate. In relation to the mail order business, Coloplast stated that it would not refuse to make Coloplast products available to competing DACs/mail order businesses because these competitors would simply source Coloplast products directly from a wholesaler rather than from Coloplast. Separately, all DAC licensees were required to supply on request any product listed on the Drug Tariff. In relation to the nursing service, Coloplast maintained that the nurses acted independently; any concern, however, could be remedied by a behavioural, not structural, undertaking.

*(f) Divestment of one or more DACs*

Although Coloplast could comply with such a requirement, it could not see how this would have any impact on competition.

*(g) Requirement to grant an exclusive licence to the intellectual property rights in Conveen sheaths*

This was considered to be disproportionate and draconian for the same reason given in relation to the proposal that Coloplast's pre-acquisition sheath business be divested.

***Behavioural remedies***

*(h) Price controls over any or all of Coloplast's intermittent catheters, sheaths and bags supplied to hospitals*

Such an undertaking for intermittent catheters was considered to be wholly disproportionate and ultimately damaging to competition. In so far as other segments where Coloplast had a high market share were concerned, Coloplast considered such a remedy to be unnecessary but could concur with it.

*(i) Cap on value of products supplied through Coloplast DACs*

Coloplast could not see what perceived public interest detriment this remedy was intended to cure and strongly believed that it would operate against the public interest, as it would require Coloplast to turn down requests both by new and existing customers for mail order supply.

*(j) Requirement on Coloplast DACs to supply the full range of products available under the Drug Tariff*

Coloplast already complied with this requirement.

*(k) Requirement to publish such information on sales through Coloplast DACs as might be required by DGFT*

Coloplast could not see what possible public interest detriment this was intended to cure and was not prepared to have such information made commercially available to third parties. Coloplast was, however, prepared to consider making relevant information available to the DGFT subject to patient confidentiality being preserved, but expressed concern that the provision of such information would be meaningless to the DGFT because, in so far as the ThackrayCare DACs were concerned, much of the volume of prescriptions would be generated by the ThackrayCare nurses who, as specialist continence care nurses, would have more sophisticated prescribing habits than district nurses.

*(l) Requirement to ensure that the ThackrayCare nursing service should remain an independent continence care advisory service, including a prohibition on the introduction of incentives for ThackrayCare nurses to recommend Coloplast products*

Coloplast questioned the need for such a requirement but confirmed that it would be prepared to give the necessary undertaking.

*(m) Requirement on Coloplast to collect and publish information on the recommendations of Thackray nurses*

Coloplast considered such a requirement to be unnecessary and thought that the data would convey no meaningful information about the market for the same reason given in relation to the proposal that information on sales through DACs be collected. Further, Coloplast stated that there was already an element of self-control (of the nurses) in place because the nurses informed the healthcare professional in writing about every recommendation that they made.

(n) Requirement that Thackray nurses identify themselves to patients as Coloplast employees

Coloplast believed that such a requirement would damage the reputation of Thackray nurses with regard to their independence and would therefore be detrimental to the public interest.

5.28. Coloplast put forward several other hypothetical remedies for discussion with the CC.

## **The views of SSL**

### ***Background to and rationale for the acquisition***

5.29. We were told that SSL intended to expand its operations internationally. However, its continence care business was mostly a local UK business with little prospect of successful international expansion without major investment. The business was viewed by SSL as being non-core for the wider SSL group and was run as a stand-alone operation.

5.30. SSL added that the decision to enter into discussions with Coloplast was broadly based. Following Seton Healthcare's merger with Scholl and then subsequently with the London International Group, the group's direction was towards consumer healthcare and branded consumer products. However, whilst the continence care business fitted into that strategy in the sense that it concerned healthcare products, it was geographically limited and would have required a significant amount of investment if it was to expand as SSL wished. SSL told us that it started talking to Coloplast during the second half of 2000. [ *Details omitted. See note on page iv.*

] Discussions continued into early 2001 by which time progress had been made in agreeing valuations for the disposal of SSL's continence care business [

*Details omitted. See note on page iv.*

]. The transaction was finally completed on 29 September 2001.

5.31. SSL believed that Coloplast's main reasons for wishing to acquire its continence care business were:

- (a) the acquisition of a strong additional sales team to support its own innovations in the intermittent catheter business; and
- (b) the acquisition of a nursing service to teach intermittent catheterization procedures and gain recommendations for its products.

5.32. SSL said that if the acquisition had not taken place, it could have continued to operate successfully in the continence care business, which, despite the low rate of growth in sheaths and leg bags, was growing at about 9 per cent a year overall. SSL had uncovered the potential of nursing home groups and had corrected a problem with its intermittent catheter to give it probably the best product on the market. It therefore had the opportunity to take advantage of the growth in that market and in ThackrayCare, as well as gaining extra sales of urobags at the expense of its competitors. SSL added that prior to the acquisition it had been continually eroding Coloplast's share of the sheath market.

### ***Market definition***

5.33. The total continence care market in the UK was estimated by SSL to be approximately £380 million, divided into three segments: disposable products, surgical products and drugs. SSL's continence care business was active in the disposable segment of the urology market.

5.34. SSL told us that according to DoH estimates, total sales of the reference products in the community sector in England were £59 million, of which SSL's continence care business had a 30.6 per cent share.

5.35. The following major economic changes to the market were said to have occurred over the last three years:

- (a) In 2000 NHS Supplies was said to have adopted a non-latex policy where possible; this had eliminated all latex penile sheaths from the NHS Supplies catalogue.
- (b) In 2000 NHS Supplies started to purchase urine drainage bags fitted with lever taps and deleted all bags with slide taps from its catalogue.

5.36. SSL told us that the products to be used were selected following an initial clinical assessment. It regarded pads as part of the same economic market as sheaths, catheters and bags because all were management options, with advantages and disadvantages. Once products had been selected they were unlikely to be changed unless there was a change in the patient's condition. Whilst patients were able to switch between some of the reference product categories, they would only choose to do so further to the advice of a healthcare professional after a full assessment of the patient's condition had been undertaken.

5.37. With regard to the reference product categories, alternative products were said by SSL to be available at competitive prices from other companies, for example bags from Bard or Maersk and sheaths from Rochester or Hollister Limited.

5.38. All major suppliers of the reference product categories were said by SSL to be active in the European market and not confined to the UK. However, SSL noted that there were differences between national markets in the products used. It gave as an example that whereas in Germany to collect urine at the bedside required a sample port connector, wide-bore tube, drip chamber and an anti-reflux valve which tucked into a sleeve, in other European markets urine bags were much simpler.

5.39. SSL claimed that pricing strategies were different for hospital and community sector sales. Although sales to hospitals were less profitable, they were nonetheless profitable.

5.40. It said that in its opinion branding, in terms of product names, could be important in getting sales through prescriptions and could pose a barrier to companies coming into the market.

### ***Public interest issues and benefits of the acquisition***

5.41. SSL said that the sale of its continence care business to Coloplast would not significantly affect consumer choice since, so far as SSL was aware, the pre-sale product ranges of both SSL and Coloplast were still being sold. SSL believed that there would be no effect on the compatibility of sheaths and urinary bags as a result of the sale, since all modern appliances of this nature had been interchangeable for the last three years.

5.42. SSL did not expect higher prices to hospitals. With regard to silicon sheaths, it identified four suppliers (Coloplast, Jade, Sims Portex and Braun) and contended that there would have to be collusion for silicon sheath prices to be substantially increased. It added that Coloplast would be most unwise to increase prices anyway since this would provide an opportunity for its competitors to increase their own market shares by holding their prices at existing levels.

5.43. SSL said that it was unaware of any previous occasion when a supplier had sought to increase prices beyond the DoH's (GDP) Formula and believed that, in reality, there was no chance of Drug Tariff prices being increased.

5.44. It considered the continence care element of the major wholesalers' overall business to be so insignificant that they could safely resist any pressures from Coloplast for lower discounts. It added that for Coloplast to bypass major wholesalers, it would in any event jeopardize its route to pharmacies, the major product supply route to patients.

5.45. Commenting on the possibility that the ThackrayCare Nursing Service, which had formerly been owned by SSL and was part of the Coloplast acquisition, might be used directionally to generate business, SSL commented that the main job of a Thackray nurse was to gain the trust and confidence of the referrer and that being employed by a manufacturer could be a huge barrier. To overcome this barrier Thackray nurses had to show that they were offering a product that best suited the patient's needs. It did not believe that a nurse, who was subject to a code of conduct, would prescribe or recommend a product knowing it to be inferior. SSL added that when it first acquired the ThackrayCare business it had incentivized nurses to promote one of its products. A strong adverse reaction from the nurses convinced

SSL that this was a mistake and the incentive was withdrawn. Thereafter nurses were offered an incentive based purely on the volume of sales through the company's DAC resulting from their activities.

5.46. On the issue of product range rationalization, SSL commented that since this invariably upset people, the withdrawal of products was an issue requiring careful consideration. It acknowledged that there was scope for rationalization and gave the example of overlapping leg bag ranges. It believed that one of its former products was being withdrawn by Coloplast.

5.47. Commenting on the risk that because of a decline in the number of smaller manufacturers in the continence care market, the lack of new entrants, Coloplast's substantial market shares in sheaths, bags and intermittent catheters, combined with the largest DACs and best established continence care nursing service, Coloplast would be capable of damaging competition in the market, SSL said that in its view larger sales would inevitably result. It added, however, that entry into the continence care market depended largely on innovation and differentiation. Companies with a product offering substantial benefits, which were prepared to promote it to those influencing the prescription, had an equal opportunity to successfully market that product. SSL accepted, however, that companies offering equivalent products only would find it difficult to compete against their larger competitors. SSL thought that there had been no significant new entrants into the continence care market in recent years but confirmed that there had been improvements and new additions to product ranges from a broad range of existing companies.

5.48. SSL thought that despite its enhanced market power following the acquisition, Coloplast could not afford to 'rest on its laurels' by, for example, not engaging in constant innovation. Product evolution was considered to be crucial.

5.49. Commenting on possible benefits arising from the acquisition, SSL agreed that it had spent very little on R&D compared with Coloplast.