

Complaint

IN THE MATTER OF

**EDGEWELL PERSONAL CARE COMPANY,
AND
HARRY’S, INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT*Docket No. 9390; File No. 191 0147**Complaint, February 2, 2020 – Decision, February 25, 2020*

This case addresses the \$1.37 billion acquisition by Edgewell Personal Care Company of certain assets of Harry’s, Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, and Section 5 of the Federal Trade Commission Act by substantially lessening competition in the market for disposable and systems razors sold in the United States. On February 19, 2020, Complaint Counsel moved to dismiss the complaint citing Edgewell Personal Care Company’s termination of the Agreement and Plan of Merger and withdrawn its Hart-Scott-Rodino Notification and Report Forms filed for the proposed acquisition. The Commission dismissed the Complaint without prejudice.

Participants

For the *Commission*: Nicholas Bush, Shane Bryan, Keitha Clopper, Kelly Fabian, Karen Goff, Kurt Herrera-Heintz, Jessica Moy, Marc W. Schneider, and Erika Wodinsky.

For the *Respondents*: Joseph Larson and Lori S. Sherman, Wachtell, Lipton, Rosen & Katz; Courtney Byrd and Courtney Dyer, O’Melveny & Myers LLP; and Karen Kazmerzak, Sidley Austin.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Edgewell Personal Care Company (“Edgewell”) and Harry’s, Inc. (“Harry’s”) have executed a merger agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

NATURE OF THE CASE

1. On May 9, 2019, [REDACTED], Edgewell signed an agreement to purchase Harry’s, a rival manufacturer and seller of razors. Harry’s successful 2016 leap from online, direct-to-consumer sales into brick-and-mortar retail stores interrupted over a decade of routine price increases by a once-stable duopoly. This interruption has led to lower

Complaint

prices and new product offerings for razor consumers. The Proposed Acquisition would neutralize “one of the most successful challenger brands ever built,” eliminating head-to-head competition between Harry’s and Edgewell, and removing the independent competitor that disrupted Edgewell and P&G’s longstanding and stable duopoly.

2. Historically, P&G’s Gillette brand and Edgewell’s Schick brand have dominated the system razors and disposable razors (“wet shave razors”) industry. Throughout the years of their shared dominance, Gillette led price increases [REDACTED] P&G and Edgewell rolled out new and fancier products. Razor manufacturers enjoyed exceptionally high margins, while consumers suffered.

3. As the 2010s progressed, P&G and Edgewell raised their prices ever higher. Purchasers of razors were, as Harry’s founders put it, tired of “overpaying for overdesigned razors.” Harry’s saw an opening: a market ripe for disruption and an untapped platform—the Internet—on which to disrupt. Harry’s founders correctly recognized that the market was looking for a no-frills, value-priced system razor product that delivered “a great shave at a fair price.” Seizing this opportunity, Harry’s, like fellow start-up Dollar Shave Club, launched an Internet-based business to market and sell men’s razors directly to consumers at a lower price point than the most comparable razors then available in brick-and-mortar retail stores.

4. Harry’s and Dollar Shave Club quickly succeeded in—and largely filled—the previously untapped online space. But the successful entry by Harry’s and Dollar Shave Club with their online Direct to Consumer (“DTC”) models did not stop the price increases by P&G and Edgewell, both of which sold their products primarily through brick-and-mortar retailers.

5. Significant change came when Harry’s made the first—and, to date, only—successful jump from an online DTC platform into brick-and-mortar retail. In August 2016, Harry’s launched exclusively at Target with suggested retail prices several dollars below the most comparable Schick and Gillette products, a significant discount. Harry’s arrival in Target made a substantial impact, with Harry’s immediately winning customers from Edgewell and P&G. Edgewell described Harry’s trajectory as one of “[REDACTED]” and observed that Harry’s took “[REDACTED].”

6. Harry’s entry at Target ended the long-standing practice of reciprocal price increases by Gillette and Edgewell. Shortly after Harry’s successful launch at Target, P&G implemented a “[REDACTED]” price reduction across its portfolio of razors, reversing course on its practice of leading yearly price increases. Edgewell changed course as well, abandoning its strategy of being a “[REDACTED]” of Gillette’s pricing actions. Rather than match Gillette’s price decrease, Edgewell began tracking Harry’s growth and increased promotional spend (funding for discounts and other promotions) [REDACTED]. Edgewell hoped that this effort would [REDACTED]

7. But Harry’s continued its competitive advance. In May 2018, Harry’s launched at Walmart—again, successfully stealing shelf space and customers from Edgewell and Gillette.

Complaint

8. Harry's successful launch at Walmart, coupled with Harry's ongoing success at Target, "[REDACTED]." Bowing to this competitive pressure, Edgewell implemented its own significant [REDACTED] price decrease, lowering the prices on its razors by as much as [REDACTED]. Edgewell also [REDACTED] with a variety of other competitive initiatives [REDACTED], competing on price and non-price attributes, including creating "[REDACTED]" razors: [REDACTED].

9. Head-to-head competition between Harry's and Edgewell further intensified when, in October 2018, Harry's launched its first women's razor under the Flamingo brand. Edgewell preemptively reduced prices on its Hydro Silk women's razors and ran aggressive promotions [REDACTED] in anticipation of, [REDACTED], Flamingo's entry into Target. Again, Edgewell's efforts did not stop Harry's, although they may have slowed its momentum. Flamingo has taken significant market share from both Edgewell and Gillette at Target, and Target made room on its shelves for Flamingo at [REDACTED] expense.

10. Harry's significant entry into brick-and-mortar retail transformed the wet shave razor market from a comfortable duopoly to a competitive battleground. Edgewell, in particular, has found itself fighting the threat that Harry's poses to both its branded products and its private label offerings (i.e., razors manufactured by Edgewell for a retailer partner, to be sold under the retailer's brand). Consumers benefited from the resulting price discounts and the introduction of additional Edgewell branded and private label choices.

11. The Proposed Acquisition is likely to result in significant harm by eliminating competition between important head-to-head competitors. The Proposed Acquisition also will harm competition by removing a particularly disruptive competitor from the marketplace at a time when that competitor is currently expanding into additional retailers.

12. The Proposed Acquisition would significantly increase concentration in relevant markets that are already highly concentrated today. As a result, the Proposed Acquisition is presumptively anticompetitive. Current market share statistics and concentration measures understate Harry's future competitive significance, however, because Harry's continues to expand into additional retailers with its men's and women's products.

13. Both Edgewell and P&G have publicly recognized that the Proposed Acquisition is likely to benefit them rather than consumers. Edgewell's CEO, who spent more than a decade at P&G before coming to Edgewell, recently explained on a quarterly earnings call that Edgewell is "not interested" in escalating price competition once the Proposed Acquisition is complete, or in "lead[ing] a new round . . . of value destruction"—that is, in lowering prices. On a recent quarterly earnings call, P&G's CEO explained that the Proposed Acquisition does not create a significant competitive threat to P&G's Gillette brand; to the contrary, "Edgewell's [sic] going to have to make money. They bought a company. . . . And to me, that's not a bad thing for the overall value-creation opportunities in the industry."

14. Respondents cannot show that the Proposed Acquisition will induce new entry that would be timely, likely, or sufficient to counteract the anticompetitive effects of the Proposed Acquisition. Significant barriers exist for potential new entrants into the manufacture and sale of

Complaint

wet shave razors, including substantial capital investment in a manufacturing facility; significant intellectual property rights and trade secret protections; the time and difficulty of attracting a broad customer base to secure placement on retailer shelves; and the fact that the market gaps in wet shave in brick-and-mortar and online that Harry's successfully exploited have been largely filled. These barriers make entry difficult and unlikely to constrain the merged entity. Nor is the Proposed Acquisition likely to induce the remaining razor manufacturers to expand or reposition to offset the Proposed Acquisition's likely anticompetitive effects.

15. Respondents cannot show cognizable, merger-specific efficiencies that would offset the likely and substantial competitive harm resulting from the Proposed Acquisition.

JURISDICTION

16. Respondents are, and at all relevant times have been, engaged in activities in or affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

17. The Acquisition constitutes a merger subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

RESPONDENTS

18. Edgewell is a consumer products company based in Chesterfield, Missouri, with a diversified portfolio of over 25 established brand names, including multiple razor brands, such as Schick, Intuition, Hydro Silk, Skintimate, Bulldog, American Safety Razor, and Jack Black. Edgewell also offers private label razor manufacturing for retailers and razor companies selling throughout North America, including [REDACTED]. In 2018, Edgewell's total branded razor sales were approximately [REDACTED], broken down as follows: men's system razors ([REDACTED]), women's system razors ([REDACTED]), and disposable razors ([REDACTED]). Additionally, Edgewell's total sales in 2018 for its private label business were approximately [REDACTED], broken down as follows: men's system razors ([REDACTED]), women's system razors ([REDACTED]), and disposable razors ([REDACTED]).

19. Harry's, based in New York, New York, manufactures wet shave system razors and sells them through its DTC platform, online retailers, and brick-and-mortar retailers under the Harry's and Flamingo brands. Harry's total branded razor sales in 2018 were approximately [REDACTED]. Harry's also manufactures private label system razors [REDACTED], and has annual private label revenue of approximately [REDACTED]. In addition to wet shave razors, Harry's sells a variety of other personal care items such as face wash, shave creams, and body wash.

THE ACQUISITION

20. On May 9, 2019, Edgewell and Harry's signed an Agreement and Plan of Merger, pursuant to which Edgewell would acquire Harry's. Total consideration for the Acquisition is approximately \$1.37 billion in stock and cash.

Complaint

RELEVANT MARKETS

21. The relevant market in which to evaluate the effects of the Proposed Acquisition is no broader than the manufacture and sale of wet shave system razors and disposable razors (“wet shave razors”) sold in the United States.

22. It is also appropriate to analyze the effects of the Proposed Acquisition in narrower relevant markets within the wet shave razor market. The razor industry recognizes several distinct segments within the wet shave razor market. The relevant market may be divided by gender lines into markets of men’s and women’s products. Additionally, the relevant market may be separated into markets for system razors and disposable razors. Finally, the relevant market may be divided by channel of sale, resulting in separate markets for brick-and-mortar sales and online sales. Analyzing the Proposed Acquisition in these segments individually would focus attention on specific narrower markets where the harm is most acute—for example, a market for men’s system razors sold in brick-and-mortar retailers. Given consumer preferences for particular retailers or retail categories, relevant markets may even be defined as narrowly as a single retailer or a cluster of retailers in which competitive conditions are similar, such as brick-and-mortar retailers where Harry’s is currently available.

A. Relevant Product Markets

23. The relevant product market is no broader than the manufacture and sale of wet shave razors, which includes system razors and disposables.

24. System razors consist of a reusable handle and a detachable razor cartridge. Consumers are able to replace the razor cartridge with refill cartridges sold by the same manufacturer without the need to replace the handle.

25. Disposable razors comprise a single assembly of handle with permanently affixed blade(s). Consumers throw away disposable razors once they are finished using them.

26. Other forms of hair removal, such as electric (or “dry”) shaving razors and alternative hair removal products (*e.g.*, hair removal creams or waxes) are not close substitutes for wet shave razors. Industry participants and Respondents recognize that wet shave razors are distinct from dry shave razors and alternative hair removal products and sell these products at distinct price points to distinct consumers.

27. Customers would not switch from wet shave razors to dry shave razors or alternative hair removal products in sufficient numbers to defeat a small but significant non-transitory increase in price (“SSNIP”) by a hypothetical monopolist of wet shave razors.

28. A relevant product market is the manufacture and sale of wet shave system razors and disposable razors.

29. Industry participants also recognize narrower product markets divided along gender lines (men’s versus women’s), by product type (system or disposable), and by channel of sale

Complaint

(brick-and-mortar versus online). Industry participants recognize each segment as distinct from others, and conduct their business accordingly.

30. The Proposed Acquisition would produce anticompetitive effects within multiple narrower relevant markets, in addition to producing anticompetitive effects in the broader wet shave razor market. The Proposed Acquisition would harm competition in narrower relevant markets for the sale of: (i) men's wet shave razors; (ii) women's wet shave razors; (iii) system razors (including both men's and women's); (iv) men's system razors; and (v) women's system razors.

31. The Proposed Acquisition would also harm competition in relevant markets for sales through brick-and-mortar retailers of: (i) wet shave razors (including both men's and women's); (ii) men's wet shave razors; (iii) women's wet shave razors; (iv) system razors (including both men's and women's); (v) men's system razors; and (vi) women's system razors.

32. In each of these narrower relevant markets, a hypothetical monopolist could profitably impose a SSNIP on purchasers of the relevant product.

B. Relevant Geographic Market

33. A relevant geographic market in which to analyze the Proposed Acquisition is the United States. Razor manufacturers negotiate distinct terms of sale with customers for different countries and, in some cases, offer distinct product assortments in different countries. Respondents and other industry participants generally do not make granular or distinctive purchasing decisions for smaller regions within the United States.

34. A hypothetical monopolist of wet shave razors in the United States profitably could impose a SSNIP on U.S. customers. Customers based in the United States cannot defeat a price increase in the United States via arbitrage or substitution.

MARKET PARTICIPANTS

35. Edgewell is the number two manufacturer of wet shave razors and **by far** the dominant supplier of private label razors in the United States. It manufactures and sells wet shave system and disposable razors for men and women. Edgewell's branded and private label products are available at many brick-and-mortar retailers and, in 2017, Edgewell launched a DTC website through which consumers may now purchase the Hydro Connect razor online directly from Edgewell. Edgewell owns over 25 consumer brands, including popular wet shave brands such as Schick, Intuition, Hydro Silk, Skintimate, Wilkinson Sword, Personna/American Safety Razor, Bulldog, and Jack Black.

36. Harry's launched in March 2013 as an online-only DTC men's system razor subscription service. Harry's does not manufacture or sell disposable razors. Harry's broke into brick-and-mortar retail in 2016 and has steadily expanded its retail distribution of men's wet shave razors since then. After launching exclusively in Target, Harry's expanded into Walmart in 2018 ([REDACTED]); and then in Hy-Vee, Meijer,

Complaint

Wegmans, and Kroger in 2019. In addition to its men's system razor, Harry's launched a women's system razor under the brand name Flamingo in October 2018. Shortly thereafter, Flamingo launched exclusively at Target. Flamingo is expected to reach additional retailers' shelves in the near future. In addition to its branded men's and women's razors, Harry's also manufactures a private label system razor for [REDACTED]. Harry's owns and operates its own razor factory, Feinttechnik, in Eisfeld, Germany.

37. P&G is the leading manufacturer and seller of branded system and disposable razors for men and women. P&G's razors are available for purchase online and in brick-and-mortar stores. P&G owns over 50 established brand names, including razor brands Gillette Venus, Gillette Fusion, Gillette Mach3, Gillette Skinguard, Joy, Bevel, and the Art of Shaving.

38. Société BiC ("BiC") manufactures and sells primarily disposable razors for men and women. BiC razors are available for purchase online and in brick-and-mortar stores.

39. Dollar Shave Club, Inc. ("Dollar Shave Club"), now owned by Unilever plc/Unilever N.V. ("Unilever"), sells system razors marketed primarily to men using an online, DTC model. Dollar Shave Club does not manufacture or sell disposable razors, and Dollar Shave Club razors are generally not available in brick-and-mortar retail stores. [REDACTED]

40. Dorco Company Ltd. ("Dorco") is a manufacturer and supplier of disposable and system razors for men and women. [REDACTED]

Dorco-manufactured products are available at brick-and-mortar stores and online, [REDACTED].

THE PROPOSED ACQUISITION IS PRESUMPTIVELY ILLEGAL

41. The Proposed Acquisition would lead to significant increases in concentration in already highly concentrated markets for wet shave razors and in narrower relevant markets.

42. Under the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines"), a post-acquisition market concentration level above 2,500 points, as measured by the Herfindahl-Hirschman Index ("HHI"), and an increase in HHI of more than 200 points renders an acquisition presumptively unlawful. Transactions in highly concentrated markets—markets with an HHI above 2,500 points—with an HHI increase of more than 100 points potentially raise significant competitive concerns and warrant scrutiny. The HHI is calculated by totaling the squares of the market shares of every firm in the relevant market pre- and post-acquisition.

43. The market for the manufacture and sale of wet shave razors in the United States is already highly concentrated, with an HHI of over 3,000. The Proposed Acquisition increases the concentration in this market by more than 200 points and is therefore presumptively illegal.

Complaint

44. All narrower relevant markets are also highly concentrated, and the Proposed Acquisition would cause significant increases in concentration therein. For example, the manufacture and sale of wet shave system razors sold through brick-and-mortar retail in the United States is already highly concentrated, with an HHI of over 5,000. The Proposed Acquisition increases the concentration in this highly concentrated market by more than 350 points, and is therefore presumptively illegal. In the following narrower relevant markets, the Proposed Acquisition increases the HHI by more than 200 points and results in a post-merger HHI of more than 2,500, rendering the Proposed Acquisition presumptively illegal:

- a. sale of wet shave razors at brick-and-mortar retailers;
- b. sale of system razors;
- c. sale of system razors at brick-and-mortar retailers;
- d. sale of men's wet shave razors;
- e. sale of men's wet shave razors at brick-and-mortar retailers;
- f. sale of men's system razors;
- g. sale of women's system razors;
- h. sale of men's system razors at brick-and-mortar retailers;
- i. sale of women's system razors at brick-and-mortar retailers; and
- j. a cluster market composed of sales of wet shave razors at retailers where Harry's is currently available.

45. In the following narrower relevant markets, the Proposed Acquisition increases the HHI by more than 100 points and results in a post-merger HHI of more than 2,500, and potentially raises significant competitive concerns and warrants scrutiny:

- a. sale of women's wet shave razors; and
- b. sale of women's wet shave razors at brick-and-mortar retailers.

46. Changes in HHI based on current market shares understate the competitive significance of the Proposed Acquisition because Harry's continues to expand into additional brick-and-mortar retailers. Recognizing that the Proposed Acquisition will arrest Harry's independent expansion, it is appropriate to analyze Harry's competitive significance by using prior entry events to project future competitive significance. Moreover, current market shares especially understate the competitive significance of Harry's in markets that include sales of women's razors because Harry's Flamingo product launched very recently.

Complaint

47. [REDACTED], the timing, scope, and competitive impact of that entry is speculative and likely would not counteract the Proposed Acquisition's competitive harm or presumptive illegality, especially when balanced against a fair projection of Harry's continued growth as a value razor product already established at retail.

ANTICOMPETITIVE EFFECTS

48. In the relevant market of wet shave razors, and in each narrower relevant market within that market, the Proposed Acquisition is likely to result in unilateral and coordinated competitive effects. The Proposed Acquisition would eliminate substantial head-to-head competition between Edgewell and Harry's, leading to higher prices for consumers—sufficient harm, on its own, to render the merger illegal. In addition, the Proposed Acquisition would also make an already susceptible market more vulnerable to coordination by eliminating a disruptive competitor.

49. P&G and Edgewell have dominated the wet shave razor market for decades, [REDACTED]. This effective duopoly was good for manufacturers and bad for consumers: Edgewell secured gross margins as high as [REDACTED] on its branded razors while Edgewell and Gillette focused their efforts on selling high-priced razors. Prices ratcheted up, [REDACTED].

50. By the early 2010s, the wet shave razor market was ripe for disruption. Harry's founders recognized that P&G and Edgewell were failing to offer consumers a quality, no-frills system razor at a value price point. In March 2013, Harry's used the Internet to launch a men's system razor that filled this market gap by selling directly to the consumer, avoiding the initial need for distribution through brick-and-mortar retailers. As Harry's website explains: "Our founders, Jeff and Andy, created Harry's because they were tired of overpaying for overdesigned razors, and of standing around waiting for the person in the drugstore to unlock the cases so they could actually buy them. When they asked around, they learned lots of guys were upset about the situation too, so they decided to do something about it." Harry's was not alone in seeing this opportunity: Dollar Shave Club launched its online DTC platform in 2011.

51. Harry's and Dollar Shave Club soon built an online customer base, but this did not stop Edgewell and P&G from continuing their annual price increases in brick-and-mortar retail stores. Edgewell's internal documents demonstrate that [REDACTED]. As Edgewell's then-CEO explained in an earnings call, "the jury's out" on shave clubs because they would have to "become more than a shave club to really survive."

52. Everything changed in August 2016, when Harry's expanded into brick-and-mortar retail. Harry's made Target the exclusive brick-and-mortar retailer for Harry's [REDACTED]. [REDACTED] taking shelf space away from Edgewell's Schick brands, among others.

Complaint

53. Harry's entry into Target marked the beginning of meaningful head-to-head competition between Harry's and Edgewell. One of Harry's general objectives was to [REDACTED] and to "[REDACTED]," and, specifically, to "[REDACTED]" at Target.

54. Harry's launch at Target was successful. At the time of its launch, Harry's [REDACTED] retail prices were roughly \$10 cheaper than P&G's Gillette and Edgewell's Schick five blade products. This pricing advantage, coupled with prime product placement, enabled Harry's to take share quickly from Edgewell and P&G.

55. Witnessing Harry's successful launch at Target, Edgewell [REDACTED] began tracking Harry's progress and started to respond competitively. Edgewell's first competitive strategy was to launch extensive promotional programming, such as [REDACTED]. Nonetheless, Edgewell lost share to Harry's.

56. In February 2017, months after Harry's successful launch at Target, P&G refrained from implementing its yearly price increase. Instead, P&G announced a significant [REDACTED] price reduction across its portfolio of wet shave razor products.

57. Edgewell decided not to follow the price cuts. Instead, Edgewell held its [REDACTED] prices steady while launching new products and offering temporary promotional programs. Because of these efforts, [REDACTED] despite Gillette's reduced prices. These efforts, however, did not prevent Edgewell from continuing to lose share to Harry's.

58. By early 2018, it was clear to an Edgewell senior executive that the industry had experienced "[REDACTED]," and it was "[REDACTED]" that Edgewell could count on "[REDACTED]."

59. In May 2018, Harry's products appeared on Walmart's shelves. Harry's [REDACTED] to secure distribution, and again took substantial shelf space and sales from Edgewell.

60. As Edgewell's CEO explained to investors, Harry's launch at Walmart represented "the most significant impact" on Edgewell's wet shave business in fiscal year 2018.

61. In the end, the competitive pressure generated by Harry's successful launches at Target and Walmart defeated Edgewell's plan to maintain [REDACTED] prices. By the end of 2018, Edgewell had reduced its [REDACTED] prices significantly, by as much as [REDACTED] on some razors. At the time, Edgewell's then-CEO [REDACTED] to explain the reason for the price cuts to his board. He wrote: "[REDACTED]."

62. Not only did the competitive pressure result in price cuts by Edgewell on existing products, it also forced Edgewell to innovate by [REDACTED]. Edgewell launched [REDACTED] razors—[REDACTED]—alone and in partnership with retailers.

Complaint

63. On the heels of its men's system razor's growing success, Harry's launched a women's system razor under the Flamingo brand in late 2018. This time, Edgewell acted aggressively before Flamingo razors hit brick-and-mortar retail shelves, implementing preemptive price cuts on its women's system razors as part of the 2018 [REDACTED] price reduction. Edgewell also developed a [REDACTED] in response to news of Flamingo's impending entry. Despite Edgewell's efforts, Harry's gained at Edgewell's expense: Flamingo established a significant competitive foothold, and took [REDACTED] shelf space from Edgewell products.

64. This head-to-head competition continues to the present day. Harry's, with its men's and women's products at value price points, continues to be a fierce competitor. Harry's recently expanded its brick-and-mortar footprint again, selling its products in Hy-Vee, Meijer, and Kroger. And Harry's products are likely to expand into additional retailers in the near term regardless of whether Harry's is acquired by Edgewell.

65. The Proposed Acquisition is anticompetitive because it will eliminate the growing competition between Harry's and Edgewell that has been highly beneficial to consumers. As a result of that competition, consumers today enjoy lower prices on many different types of wet shave razors, and they have a broader selection of razors at value price points.

66. Edgewell recognizes the many ways it can benefit at consumers' expense by acquiring Harry's. As Edgewell's CFO put it, the "[REDACTED]" Edgewell's Vice President [REDACTED] has discussed how [REDACTED] : the combined company could offer "[REDACTED]" Or, Edgewell could simply [REDACTED] "

67. In addition to the loss of important head-to-head competition between Harry's and Edgewell, the Proposed Acquisition would eliminate Harry's as a uniquely disruptive competitor that interrupted the P&G/Edgewell duopoly that Harry's founders and Edgewell's leaders variously called a "[REDACTED]," a "[REDACTED]," and "[REDACTED]." Prior to Harry's entry into brick-and-mortar retail, each year Gillette raised [REDACTED] prices; and each year Edgewell would do the same, [REDACTED]. Edgewell maintained a "[REDACTED]" strategy—[REDACTED], maintaining a consistent discount to the market leader.

68. On one occasion in 2010, Edgewell employees [REDACTED]. As a result, Edgewell [REDACTED]. Edgewell management was incensed: "[REDACTED]" [REDACTED] " [REDACTED]. Moreover, Edgewell immediately [REDACTED]

Complaint

[REDACTED]. Executives subsequently noted that they had [REDACTED].”

69. Competitive conditions for the sale of wet shave razors and narrower relevant markets display various features that make a market vulnerable to coordination as identified in the Merger Guidelines. For example, competitors can promptly and confidently observe the competitive initiatives of their rivals. And relatively few customers would switch to the deviating firm before rivals are able to respond, limiting the incentives to deviate from the terms of coordination.

70. As the above demonstrates, the Proposed Acquisition likely would result in both unilateral and coordinated competitive effects in the relevant market of wet shave razors. The anticompetitive effects alleged in paragraphs 48-69 are also illustrative of the type of harm likely to occur in each of the narrower relevant markets as a result of the Proposed Acquisition.

LACK OF COUNTERVAILING FACTORS

71. Respondents cannot show that the Proposed Acquisition will induce new entry or repositioning by existing razor manufacturers that would be timely, likely, or sufficient to counteract the anticompetitive effects of the Proposed Acquisition.

72. In particular, existing competitors for the manufacture and sale of wet shave razors P&G/Gillette, Dollar Shave Club, and BiC are unlikely to reposition in a way that would deter or counteract the anticompetitive effects of the Proposed Acquisition. P&G [REDACTED] lead yearly price increases before Harry’s disrupted the market rather than to compete vigorously on price.

[REDACTED]

73. The market for the manufacture and sale of wet shave razors, and narrower relevant markets within the wet shave category, have high barriers to entry that make timely, sufficient entry unlikely to occur.

74. In order to be a significant competitor, a razor company must be able to manufacture and sell its own blades: in other words, the razor company must build or buy a factory. Building a razor factory is expensive and can take years even with significant resources. Acquiring and running a factory may be even more costly, and few manufacturing facilities exist today.

75. Even having secured a razor factory, an entrant must navigate a thicket of intellectual property rights and trade secret protections to gain the necessary know-how to deploy its manufacturing capacity and equipment effectively. Among other things, it takes significant time, and significant investment, to develop a competitive razor blade.

Complaint

76. Once the razor manufacturer has a competitive razor blade, the manufacturer must secure distribution and premier product placement at brick-and-mortar retail in order to scale. In order to secure brick-and-mortar distribution with premier shelf space, Harry's spent years establishing its brand online and then used a slow, staged rollout [REDACTED]. Replicating that process is likely to render entry or repositioning untimely, but failing to replicate that process decreases the likelihood of success.

77. Any aspiring de novo entrant seeking to follow in Harry's footsteps faces a much steeper path to scale than the one that Harry's trod. Harry's identified and exploited a market opportunity in the form of a previously unmet demand for a quality, no-frills system razor at a value price point. Harry's was successful in developing its brand through the then-nascent online market, using the Internet to sell directly to consumers. More importantly, Harry's was the first to place its product in brick-and-mortar, where it exploited a large gap in product offerings to reach a scale that allowed it to disrupt the industry giants. Any new entrant would lack Harry's early-mover advantage in the now-mature DTC space and on the now-crowded shelves of brick-and-mortar retailers. Because the size of the opportunity to be exploited is now smaller, entry is less profitable. In effect, Harry's has plucked the low-hanging fruit online and in stores.

78. Respondents cannot demonstrate cognizable and merger-specific efficiencies that would be sufficient to rebut the presumption and evidence of the Proposed Acquisition's likely anticompetitive effects.

VIOLATION**Count I – Illegal Agreement**

79. The allegations of Paragraphs 1 through 78 above are incorporated by reference as though fully set forth.

80. The Merger Agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

Count II – Illegal Acquisition

81. The allegations of Paragraphs 1 through 80 above are incorporated by reference as though fully set forth.

82. The Merger, if consummated, may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

Complaint

NOTICE

Notice is hereby given to the Respondents that the thirtieth day of June, 2020, at 10:00 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Merger challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the

Final Order

Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the Merger is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant markets, with the ability to offer such products and services as Edgewell and Harry's were offering and planning to offer prior to the Merger.
2. A prohibition against any transaction between Edgewell and Harry's that combines their businesses in the relevant markets, except as may be approved by the Commission.
3. A requirement that, for a period of time, Harry's and Edgewell provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant markets with any other company operating in the relevant markets
4. A requirement to file periodic compliance reports with the Commission.
5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore Harry's as a viable, independent competitor in the relevant markets.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this second day of February, 2020.

By the Commission.

ORDER DISMISSING COMPLAINT

This matter comes before the Commission on Complaint Counsel's Motion to Dismiss the Complaint. Having considered the motion, it is hereby

ORDERED that the Motion to Dismiss the Complaint, dated February 19, 2020, is **GRANTED**, and the complaint is **DISMISSED** without prejudice.

By the Commission.

Complaint

IN THE MATTER OF

T&M PROTECTION RESOURCES, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket No. C-4709; File No. 192 3092
Complaint, March 16, 2020 – Decision, March 16, 2020

This consent order addresses T&M Protection Resources, LLC's violation of Section 5 of the Federal Trade Commission Act by disseminating privacy policies and statements claiming Respondent participated in the EU-U.S. Privacy Shield framework. The complaint alleges that Respondent obtained Privacy Shield certification in 2017, but did not renew its participation after the certification expired in 2018, nor did it withdraw and affirm its commitment to protect any personal information it had acquired. After its certification lapsed, Respondent continued to claim it participated in the EU-U.S. Privacy Shield framework. The consent order requires Respondent must not misrepresent the extent to which Respondent participates in any privacy or security program sponsored by a government or any self-regulatory or standard-setting organization.

Participants

For the *Commission*: Megan Cox and Andy Hasty.

For the *Respondents*: Eddie Holman and Lydia Parnes, Wilson Sonsini Goodrich & Rosati.

COMPLAINT

The Federal Trade Commission ("FTC"), having reason to believe that T&M Protection Resources, LLC, a limited liability corporation, has violated the Federal Trade Commission Act ("FTC Act"), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent T&M Protection Resources, LLC is a Delaware limited liability corporation with its principal office or place of business at 230 Park Avenue, Suite 440, New York, New York 10169.
2. Respondent provides background check, security and investigative services. In connection with providing services relating to background checks, Respondent obtained personal data about individuals in the EU.
3. The acts and practices of Respondent as alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act.
4. Respondent has set forth on its website, <https://www.tmprotection.com/privacy-policy>, privacy policies and statements about its practices, including statements related to its participation in the EU-U.S. Privacy Shield framework agreed upon by the U.S. government and the European Commission.