

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

The Procter & Gamble Company,
a corporation

and

Billie, Inc.,
a corporation.

Docket No. 9400

PUBLIC VERSION

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 The Procter & Gamble Company (“P&G”) and Billie, Inc. (“Billie”) 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:

I. NATURE OF THE CASE

1. In late 2017, Billie, Inc. launched an online only, direct-to-consumer challenge to P&G’s women’s razor dominance. Among other things, Billie charged a low price, employed savvy marketing designed to draw attention to the “pink tax”—that is, the practice of charging a premium for razors marketed to women that are substantially similar to razors marketed to men—and positioned the Billie product as “anti-Venus.”

2. Two years later, Billie had grown substantially and at P&G’s expense. P&G now seeks to acquire Billie on the eve of Billie’s expansion into brick-and-mortar retail. As P&G’s CEO for Grooming observed, the “big” value from this acquisition to P&G is the “removal of the competitive threat.” The removal of Billie as an independent competitor eliminates important and growing head-to-head competition between P&G and Billie, and is likely to harm consumers through higher prices, among other harms.

3. P&G is the market leader in the sale of women's and men's wet shave razors. Wet shave razors require the use of water and, typically, a shave prep product such as shaving cream, shave gel, or shave soap. Nearly all wet shave razors are system or disposable razors. System razors consist of a reusable handle and a detachable razor cartridge that a consumer can replace with refill cartridges. Disposable razors comprise a handle with permanently affixed blades that consumers throw away after use.

4. Launched in 2017, and backed by venture capital firms including Goldman Sachs and celebrity investors Venus and Serena Williams, Billie is a fast-growing online company that sells a mid-tier women's system razor. Billie built its brand by finding an underserved customer base of Generation Z and Millennial women. Billie won their business by, among other things, offering a low price and attacking the incumbents' perceived practice of charging a pink tax for women's razors. Billie also emphasized a "female-first" message. Billie challenged traditional portrayals of women's razors. Billie became the first brand to use advertisements that normalized female body hair, which many saw as a critique of P&G Venus's advertising. Billie targeted P&G from the start, with a vision to "[d]ethrone Gillette Venus to become the number one women's razor brand in the U.S." Billie's objective was to shake up the women's shaving category, and even P&G recognized Billie as "anti-Venus."

5. The Proposed Acquisition is likely to result in significant harm by eliminating competition between the market leader and an important and growing head-to-head competitor. The Proposed Acquisition arrests Billie's progress as it was on the cusp of expanding into brick-and-mortar retail stores, which would have greatly heightened the already fierce competition between P&G and Billie.

6. P&G's CEO of Grooming viewed the "big" value from this acquisition as the "removal of the competitive threat." P&G's Senior Vice President of Grooming in North America encouraged others to "think of" the value created by acquiring Billie in terms of the "reduction of the competitive threat."

7. The Proposed Acquisition would significantly increase concentration in relevant antitrust markets that are already highly concentrated today. As a result, the Proposed Acquisition is presumptively anticompetitive. Current market share statistics and concentration measures understate Billie's future competitive significance, however, because Billie is a fast-growing brand that would grow even faster after its expansion into brick-and-mortar retail.

8. Respondents cannot show that the Proposed Acquisition will induce new entry or repositioning by existing razor suppliers that would be timely, likely, or sufficient to counteract the anticompetitive effects of the Proposed Acquisition. Billie's first-mover advantage targeting Millennial and Gen Z women online, the high costs of and challenges inherent in establishing a razor brand, the rising costs of online advertising, and the now crowded space at brick-and-mortar retailers (due to P&G's launch of Joy, Harry's launch of Flamingo, and Billie's likely addition to ██████████ among other things, combine to make entry or repositioning in response to the merger unlikely.

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

II. JURISDICTION

10. 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.

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

III. RESPONDENTS

12. P&G is a publicly held company, headquartered in Cincinnati, Ohio, that specializes in the manufacture and sale of consumer goods. P&G generated net sales across all business units of approximately \$71 billion for the fiscal year ending June 30, 2020. P&G manufactures, produces, and sells a variety of razors and shave products online and in brick-and-mortar retail, under brands that include Gillette, Venus, Joy, Braun, Bevel, and The Art of Shaving. P&G generated approximately \$6 billion in FY 2020 net sales from its Global Grooming business unit, which encompasses most of its razors and ancillary products. From January 2020 to March 2020, P&G generated approximately [REDACTED] in revenue in wet shave products, [REDACTED] of which was attributable to women’s wet shave razors.

13. Billie, Inc. (“Billie”) is a privately held company based in New York, New York, that sells a five-blade wet shave systems razor through its DTC platform under the Billie brand. Billie [REDACTED] Billie also sells shave cream, body wash, lotion, lip balm, dry shampoo, and facial wipes. Billie’s 2019 sales of women’s system razors accounted for [REDACTED] in net sales. [REDACTED]

IV. THE ACQUISITION

14. On December 31, 2019, P&G and Billie signed an Agreement and Plan of Merger, pursuant to which P&G will acquire 100 percent of the voting securities of Billie for approximately [REDACTED]

V. RELEVANT MARKETS

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

16. It is also appropriate to analyze the effects of the Proposed Acquisition in at least two narrower relevant markets within the wet shave razor market: (1) the market for the production and sale of women’s wet shave razors in the United States and (2) the market for the production and sale of wet shave system razors in the United States.

A. Relevant Product Markets

17. The relevant product market is no broader than the production and sale of wet shave razors, which includes system and disposable razors [REDACTED] that is, customers purchase razors both online and in brick and mortar retail stores.

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

19. Disposable razors comprise a single assembly of handle with permanently affixed blade(s). Consumers discard disposable razors after they finish using them.

20. 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.

21. 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.

22. The Proposed Acquisition would produce anticompetitive effects within at least two 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 production and sale of: (i) women’s wet shave razors and (ii) system razors (including both women’s and men’s).

23. Industry participants recognize narrower product markets divided along gender lines (women’s or men’s) and by product type (system or disposable). Industry participants recognize each segment as distinct from others and conduct their business accordingly.

24. 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

25. The relevant geographic market in which to analyze the Proposed Acquisition is no broader than the United States. Razor suppliers 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 or sale decisions for smaller regions within the United States.

26. 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.

VI. MARKET PARTICIPANTS

27. P&G is the leading manufacturer of branded systems razors globally and in the United States. P&G is also a major producer of disposable razors. P&G's razor brands include the Gillette family (including the Joy and Venus women's razor brands), Braun, Bevel, and The Art of Shaving. P&G holds a dominant market position in the sale of wet shave razors, accounting for more than [REDACTED] of sales by revenue in some relevant markets. P&G manufactures its own blades and cartridges for its wet shave razor brands.

28. Billie is a fast-growing, digitally-native company that began selling a five-blade women's system razor in November 2017. [REDACTED]

29. Edgewell is a consumer products company that sells a full line of system and disposable razors marketed separately to men and women. Edgewell owns over 25 established brand names, including razor brands Schick and Personna/American Safety Razor. Edgewell also sells private label wet shave products and components in North America through its Private Brands Group to retailers and non-integrated razor companies [REDACTED].

30. Société BiC ("BiC") manufactures and sells consumer products including disposable lighters, pens, and razors. [REDACTED] of BiC's wet shave razor sales in the United States are men's and women's disposable razors, although BiC also sells a system razor. [REDACTED]

31. Harry's Inc. ("Harry's") manufactures and sells five-blade men's and women's system razors. Harry's sells its men's system razor under the Harry's brand and its women's system razor under the Flamingo brand. The vast majority of Harry's branded razor sales are made under the Harry's brand. [REDACTED]

[REDACTED] Harry's does not manufacture or sell disposable razors.

32. Dollar Shave Club, Inc. ("Dollar Shave Club"), now owned by Unilever plc/Unilever N.V. ("Unilever"), sells system razors purchased predominantly by men. Dollar Shave Club does not manufacture or sell disposable razors.

VII. THE PROPOSED ACQUISITION IS PRESUMPTIVELY ILLEGAL

33. Under the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines"), a post-acquisition market concentration level above 2500 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 resulting in highly concentrated markets—markets with an HHI above 2500 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.

34. The market for the production and sale of wet shave razors in the United States is already highly concentrated, with an HHI of over 3000. The Proposed Acquisition increases the

concentration by more than 125 points and therefore potentially raises significant competitive concerns and warrants scrutiny.

35. The market for the production and sale of women's wet shave razors in the United States is already highly concentrated, with an HHI of more than 2500. The Proposed Acquisition increases the concentration in this market by more than 300 points and is therefore presumptively illegal.

36. The market for the production and sale of women's and men's wet shave system razors in the United States is already highly concentrated, with an HHI of over 4000. The Proposed Acquisition increases the concentration in this market by more than 200 points and is therefore presumptively illegal.

37. Changes in HHI based on current market shares understate the competitive significance of the Proposed Acquisition because Billie is rapidly growing. Billie was about to expand its sales into additional channels, particularly brick-and-mortar retail, before the Proposed Acquisition arrested its progress.

VIII. ANTICOMPETITIVE EFFECTS

38. In each of the relevant markets, the Proposed Acquisition would eliminate substantial and growing head-to-head competition between P&G and Billie, likely leading to higher prices and other harm for consumers.

39. P&G has long been the market leader in sales of women's and men's wet shave system razors. Billie saw an opportunity to attack P&G's position and shake up the category by entering the market positioned as an "anti-Venus" razor fighting the practice of charging women a "pink tax."

A. Billie Competes Aggressively Against P&G Today

40. In November 2017, Billie began selling a \$9 woman's system razor through an online direct-to-consumer ("DTC") platform. Billie targeted Generation Z and Millennial women as customers, with "female first" messaging that challenged traditional marketing approaches to women's razors.

41. Billie successfully built its brand through marketing campaigns focused on fighting the pink tax and normalizing body hair on women. As Billie's website explains, "[w]e noticed that women were overpaying for razors and shamed for having body hair. Kind of a double whammy, when you think about it. So, we did away with the Pink Tax and put body hair on the big screen."

42. Billie grew from [REDACTED] in net sales in 2017 to [REDACTED] in net sales in 2018. Billie's growth caught P&G's attention, especially after Harry's and Dollar Shave Club's recent

disruption of P&G's stable market leadership in men's wet shave razors.¹ A mid-2018 draft memorandum discussing [REDACTED]

43. By August 2018, P&G set up a women's system razor DTC business, called Venus Direct, as a competitive response to Billie. Venus Direct offered customers a subscription service featuring the same line-up of Venus razors available in brick-and-mortar stores.

44. P&G's new DTC business did not stop Billie's growth. [REDACTED]

45. From the start, Billie positioned its product to attack P&G's Gillette Venus product. Billie told its initial investors that its goal was to "Dethrone Gillette Venus." P&G noted the attack: "Billie has positioned itself as notably 'anti-Venus,' with negative references to portraying women as 'a goddess just for shaving.'"

46. P&G, for its part, was "being proactively paranoid," according to its CEO of Grooming. In addition to its DTC offering, in March 2019, P&G launched its Joy razor exclusively with Walmart. Joy became part of P&G's plan to offer a youthful-oriented mid-tier female razor, much like Billie. [REDACTED] P&G launched Joy quickly as an online DTC brand [REDACTED]

47. Joy and Billie target a similar age group. P&G hoped that they could get Generation Z and Millennial women to join the Joy family before Billie (or Flamingo) could sign them up.

48. Joy's branding has a number of resemblances to the Billie product. Upon seeing the Joy razor, Billie's cofounder wrote that Joy "just ripped off a bunch of our stuff," even "the tile choice of the bathroom." Industry observers likewise recognize that Joy and Billie are close competitors.

49. P&G considered Billie's vocal stance on the "pink tax" and Billie's pricing before setting Joy's suggested retail price, among other factors. In response to Joy's launch, Billie's cofounder guessed that Joy [REDACTED]

50. Joy was priced at \$8.97 at Walmart (Joy prices at other locations vary). Billie prices its razor at \$9.

¹ See *In the Matter of Edgewell Personal Care Company and Harry's, Inc.*, FTC Docket No. 9390, Complaint (Filed Feb. 3, 2020) (describing disruption by Harry's and Dollar Shave Club in men's razors).

B. The Proposed Acquisition Halted Billie’s Expansion Into Brick-And-Mortar Retail, Which Would Have Increased Competition Between P&G And Billie

51. Billie was poised to expand into brick-and-mortar [REDACTED] prior to the P&G deal.

52. Billie and [REDACTED] understood that Billie needed to transition from a DTC-only brand to one that is available at brick-and-mortar retailers as well. [REDACTED] believed that expanding into brick-and-mortar stores would help Billie achieve profitability. [REDACTED]

53. [REDACTED]

[REDACTED] P&G worried about Billie’s expansion into retail and took steps with retailers with the hope of delaying or blocking Billie’s expansion [REDACTED]

55. Nevertheless, Billie was close to completing negotiations to expand into retail before the Proposed Acquisition abruptly halted its talks. [REDACTED]

56. [REDACTED]

57. [REDACTED] If Billie were to resume those negotiations, there is no reason to doubt that Billie would successfully conclude its negotiations to expand into brick-and-mortar retail stores. [REDACTED] Regardless of the Proposed Acquisition, Billie will successfully expand into brick and mortar retail.

58. If Billie expands into brick-and-mortar retail, it will do so at P&G’s (and others’) expense. Regardless of which retailer or retailers agree to carry Billie, Billie is likely to take significant sales and shelf space from P&G. [REDACTED]

59. P&G’s senior grooming executives recognize the heightened competition that would follow Billie’s expansion into brick-and-mortar retail. They viewed preventing Billie’s retail expansion—in a posture where Billie was a competitor to P&G—as a primary motivation for pursuing the Proposed Acquisition.

60. In mid-2019, P&G Senior Vice President of Grooming provided a list of ways in which P&G would “create value from this [the purchase of Billie].” He included on his list the “reduction of the competitive threat.” P&G’s CEO of Grooming responded to the list: “The big one is removal of the competitive threat.” A P&G analyst observed that the proposed transaction would remove a significant disruptor from the market: “This is big news!”

61. [REDACTED]

IX. LACK OF COUNTERVAILING FACTORS

62. Respondents cannot demonstrate that new entry or expansion by existing firms would be timely, likely, or sufficient to offset the anticompetitive effects of the Acquisition.

63. Operating a successful DTC business requires a product or service that is delivering an unmet need in a category. Among other things, Billie enjoyed a first-mover advantage that led to success in the DTC channel, which, in turn, led to interest from brick-and-mortar retailers that a new entrant could not easily replicate. Billie identified and exploited a previously unsatisfied consumer need for a mid-tier women’s system razor appealing to Generation Z and Millennial women. Billie earned its loyal customer base and reputation through its marketing campaigns against P&G and other incumbents’ practice of charging a pink tax, among other things.

64. In the words of one of Billie’s co-founders: “it’s harder to enter into the market as a second mover.” Any new entrant will find it difficult to secure a sufficient return on investment because Billie already secured the most readily available DTC online customers. Attracting new online customers will now require higher advertising spend. A new entrant is unlikely to be able to enter through retailers because retailers are typically not interested in carrying a razor supplier that has not previously shown an ability to secure sales online. A new entrant is also unlikely to be able to enter as an online DTC brand to pave a path to retailers as did Harry’s and Billie because of the high cost of online advertising and Billie’s first-mover advantage.

65. In addition, the costs of online advertising are increasing significantly year over year. Any new DTC entrant would face higher costs than Billie did. These growing costs are a stronger entry barrier than Billie faced.

66. The failure of current “second movers” to replicate Billie’s significance in the woman’s razor space confirms that successful new entry or repositioning is unlikely. No DTC company has been able to replicate Billie’s online success to date. Established razor manufacturers Harry’s and P&G followed Billie’s successful online launch with launches of women’s system razors at similar price points (Flamingo and Joy, respectively). Despite backing from established razor companies and access to mass retailers, these products have lagged behind

Billie in market share and sales. The space is now crowded, further impeding entry or repositioning in response to the anticompetitive effect of the acquisition.

67. 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.

68. Respondents also cannot demonstrate that Billie's business will fail and that its assets will exit the market absent the proposed acquisition.

X. VIOLATION

Count I – Illegal Agreement

69. The allegations of Paragraphs 1 through 68 above are incorporated by reference as though fully set forth.

70. 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

71. The allegations of Paragraphs 1 through 70 above are incorporated by reference as though fully set forth.

72. 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.

NOTICE

Notice is hereby given to the Respondents that the twenty-second day of June, 2021, 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 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 P&G and Billie were offering and planning to offer prior to the Merger.
2. A prohibition against any transaction between P&G and Billie 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, P&G and Billie 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 Billie 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 eighth day of December, 2020.

By the Commission, Commissioner Wilson dissenting.



April J. Tabor
Acting Secretary

SEAL: