



# Statement of Issues

31 August 2012

## **Nestlé - proposed acquisition of Pfizer Nutrition**

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### **Introduction**

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (**ACCC**) in relation to the proposed acquisition by Nestlé S.A. (**Nestlé**) of Pfizer Nutrition, a global infant nutrition business, from Pfizer Inc. (the **proposed acquisition**).
2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
3. In line with the ACCC's Merger Review Process Guidelines (available on the ACCC's website at [www.accc.gov.au](http://www.accc.gov.au)) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by **14 September 2012** and anticipates making a final decision on **11 October 2012**. However, the anticipated timeline can change in line with the Merger Review Process Guidelines. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at [www.accc.gov.au/mergersregister](http://www.accc.gov.au/mergersregister).
4. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

### **Background**

5. On 24 May 2012, the ACCC commenced review of the proposed acquisition following receipt of Nestlé's submission on 22 May 2012 seeking ACCC merger review.

## The parties

### Nestlé

6. Nestlé is a global food and beverage manufacturer listed on the Swiss stock exchange. Nestlé supplies a broad variety of food and beverage products, including dairy products, coffee beverages, cereals, condiments and confectionary products. Nestlé also supplies a range of health care and nutrition products.
7. Nestlé is active globally in the manufacture and wholesale supply of infant nutrition products. In Australia, Nestlé's infant formula and toddler milk brands include NAN and Lactogen.

### Pfizer Nutrition

8. Pfizer Nutrition is a leading global paediatric nutrition company listed on the New York, London, Euronext and Swiss stock exchanges. Pfizer Nutrition, formerly Wyeth Nutrition, is part of Pfizer, a multinational pharmaceutical corporation.
9. Pfizer Nutrition is active globally in the manufacture and wholesale supply of infant nutrition products. In Australia, Pfizer Nutrition's infant formula and toddler milk brands include S-26 and SMA.

## Other industry participants

### Nutricia Australia

10. Nutricia Australia (**Nutricia**) is a division of the French multinational company Danone. Globally, Danone supplies a range of fresh dairy products, bottled waters, baby nutrition and medical nutrition products.
11. In Australia, Nutricia supplies infant and toddler milk formula under the 'Karicare' and 'Karicare Aptamil' brands. Nutricia also supplies the 'Neocate' brand, a hypoallergenic range, which is only available through the pharmacy channel.

### Heinz

12. Heinz is a global food company. In Australia, it supplies infant formula and toddler milk under the 'Heinz Nuture' brand.

### Bellamy's Organic

13. Bellamy's Organic is a Tasmanian company that supplies certified organic infant formula and toddler milk under the brand 'Bellamy's Organic'.

### Bayer

14. Bayer is a global company that supplies health care, nutrition and high-tech materials products. In Australia, Bayer supplies the 'Novalac' range of infant formula, which includes specialised infant formula designed to feed and manage common infant feeding problems of colic, constipation, diarrhoea and reflux. Bayer's products are only available through pharmacies.

## Abbott

15. Abbott Laboratories is a global health care company. In Australia, Abbott supplies specialised infant formula under the brands 'EleCare' and 'Isomil', which are only available through pharmacies.

## Other

16. Some pharmacies (for example Amcal) supply their own private label infant formula and toddler milk. ALDI has also recently entered with private label infant formula and toddler milk under its 'Mamia' brand.

## The transaction

17. On 21 April 2012, Nestlé and Pfizer entered into a Stock and Asset Purchase Agreement. Pursuant to this Agreement, Nestlé is proposing to acquire the global infant nutrition business of Pfizer Nutrition. Globally, this acquisition includes Pfizer Nutrition's baby formula business, and prenatal and maternal vitamin products.

## Market inquiries

18. On 24 May 2012 the ACCC commenced market inquiries regarding the proposed acquisition. The ACCC received information from a range of interested parties.

## With/without test

19. Section 50 of the *Competition and Consumer Act 2010* (**CCA**) prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the CCA, the ACCC considers the likely effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the "with" position) to the likely future competitive environment if the acquisition does not proceed (the "without" position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.
20. For the purposes of this Statement of Issues, the ACCC will at this stage assess the proposed acquisition against the status quo. In the event that Nestlé does not acquire the Pfizer Nutrition business in Australia, the current owners may retain the business or the business may be sold to another party.

## Areas of overlap

21. In Australia, the areas of overlap between Nestlé and Pfizer Nutrition are in the wholesale supply of:
  - infant formula and follow-on milks, which are a substitute for human breast milk for young children aged 0 – 12 months; and
  - growing-up milks which are nutritional milks for children aged 1 to 5 years.

## Industry background

### Life cycle of nutritional milk formulas designed for infants and toddlers

22. Regulations in Australia applicable to nutritional milk formulas for infants and toddlers generally distinguish between two types of products:
  - Starter Infant Formula and Follow-On Milk (**IFFO Milk**); and
  - Growing-Up Milks (**GUMs**).
23. IFFO Milk has a special dietary use and is intended as a substitute for human breast milk. IFFO Milk is formulated for infants aged between 0 and 12 months and is typically available in two compositions:
  - Stage 1: starter infant formula – for infants aged 0 to 6 months; and
  - Stage 2: follow-on formula – for infants aged 6 to 12 months.
24. GUMs, also referred to as ‘toddler milk’, are formulated for children aged between 1 and 5 years (**Stage 3**).
25. There are also **specialty formulas** which are specifically formulated to address digestive problems or designed for infants and toddlers with special needs and are made available across all stages. Examples of specialty formulas include anti-reflux and lactose intolerance formulas. Certain specialty formulas are available over-the-counter at pharmacies while other specialty formulas require prescriptions.

### IFFO Milk and GUMs

26. The ACCC understands that most IFFO Milk and GUMs sold in Australia are imported from manufacturing facilities located in countries including New Zealand, Ireland, Singapore, France, Germany, the Netherlands and Switzerland.
27. IFFO Milk and GUMs are often, but not always, made from cow’s milk. Other ingredients that may be used include soy protein or goat’s milk.
28. IFFO Milk and GUMs come in two main forms: powder and liquid (ready-to-feed) forms.
29. The ACCC understands that IFFO Milk and GUMs are commonly classed in the following product categories:
  - IFFO Milk: value, mainstream, premium/gold and specialty.
  - GUMs: mainstream and premium/gold.

30. In relation to these product categories, the ACCC understands that:
- “**value**” products tend to be lower priced products and include, for example, Nestlé’s ‘Lactogen’ or Pfizer Nutrition’s ‘SMA’ brands;
  - “**mainstream**” products are generally priced higher than value products. This includes, for example, Nestlé’s ‘NAN Pro’, Pfizer Nutrition’s ‘S-26 Original’ and Nutricia’s ‘Karicare’ standard formula;
  - “**premium**” or “**gold**” products are generally priced higher than mainstream products, and will have particular features (such as added ingredients). Premium/gold products include, for example, Nestlé’s ‘NAN Pro Gold’ and ‘NAN HA’, Pfizer Nutrition’s ‘S-26 Gold’ and Nutricia’s ‘Karicare Aptamil Gold’; and
  - “**specialty**” products are generally priced at comparable levels to premium products, or slightly higher, for example, Nestlé’s ‘NAN Anti-reflux’ and ‘NAN Sensitive’ and Pfizer’s ‘S-26 Gold Premgro’.

### Distribution channels

31. IFFO Milk and GUMs are typically supplied via three main distribution channels: grocery/retail, pharmacy and hospital.
32. The **grocery/retail channel** is by far the largest of the supply channels and accounts for roughly 73% of retail sales of IFFO Milk and GUMs. The grocery/retail channel includes the major supermarkets (e.g. Coles, Woolworths and Metcash (IGA), the mass merchant retail stores (e.g. Kmart, Target and Big W) and specialty retailers (e.g. Toys R Us).
33. The **pharmacy channel** is the second largest supply channel and accounts for roughly 25% of retail sales of IFFO Milk and GUMs. The pharmacy channel consists of a number of pharmacy banner groups, such as Amcal, Terry White Chemists and Priceline, as well as independent pharmacists. Large format ‘warehouse’ chemist retailers are an increasing source of pharmacy channel sales for IFFO Milk and GUMs products.
34. The **hospital channel** accounts for a very small proportion of overall sales (~2%) of infant formula. Hospitals generally stock a range of IFFO Milk products for emergency and general purposes.

### Regulatory requirements

35. Nutritional milk formulas for infants and toddlers, in particular IFFO Milk, are subject to a number of stringent regulatory requirements in Australia. These regulations relate to requirements for the ingredient composition of formulas and restrictions in respect of labelling and marketing of formulas.

### Restrictions on marketing and promotion of IFFO Milk

36. In 1992, the Commonwealth Government introduced the Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (**MAIF Agreement**), to give effect to the principles of the World Health Organisation’s Code of Marketing of Breast Milk Substitutes. The MAIF Agreement is a voluntary self-regulatory code of conduct and is not legally binding. However, the majority of

the infant nutrition suppliers in Australia (including Pfizer Nutrition, Nestlé, Nutricia, Heinz, Abbott and Bayer) are signatories and have agreed to be bound by its obligations. The aim of the MAIF Agreement is to protect and promote breastfeeding.

37. Pursuant to the MAIF Agreement, manufacturers and importers of IFFO Milk are prohibited from advertising or promoting IFFO Milk directly to the general public.<sup>1</sup> The MAIF Agreement does not apply to GUMs/toddler milks, nor to retailers (such as supermarkets) or distributors of infant formula.
38. The MAIF Agreement also imposes limitations on the interaction between infant formula manufacturers and health care professionals. In very broad terms, the MAIF Agreement provides that communication with the medical profession should be limited to the provision of information relating to scientific and factual matters only.

#### Requirements for composition and labelling

39. Standard 2.9.1 of the Australia New Zealand Food Standards Code (**FSANZ Code**) provides for the compositional and labelling requirements for IFFO Milk.
40. In summary, the FSANZ Code:
  - imposes regulatory requirements on the minimum composition of all infant formula;
  - prohibits a vitamin, mineral, food additive or nutritive substance from being added to infant formula unless expressly permitted by the Code. Pre-market assessment is required for any substance proposed to be used in infant formula that does not have a history of use in infant formula; and
  - provides that labelling and advertising of infant formula should not represent that the products are equivalent to or better than breast milk.
41. Standard 2.9.3 of the FSANZ Code sets out the compositional and labelling requirements for formulated meal replacements and formulated supplementary foods, which includes GUMs. As GUMs are not intended as breast milk substitutes but are a nutritional supplement when diet is inadequate, the regulatory requirements for GUMs are less prescriptive.

### **Market definition**

42. On the basis of its market inquiries to date, the ACCC's preliminary view is that the relevant markets in relation to the proposed acquisition are likely to be separate national markets for the wholesale supply of:
  - IFFO Milk; and
  - GUMs.

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<sup>1</sup> The MAIF Agreement was authorised by the then Trade Practices Commission (now the ACCC) in 1992. Authorisation of the MAIF Agreement was required as it contains marketing restrictions limiting competition and was granted on the basis that public benefit outweighed any anti-competitive effect.

## Product dimension

43. The ACCC has considered alternative product market definitions, for example:
- separate narrow product markets for each of: starter infant formula, follow-on milk, GUMs and/or specialty formula; or
  - a single broad baby formula market consisting of all IFFO Milk, GUMs and specialty formula.
44. Narrow product markets may be appropriate based on the limited demand-side substitutability between the different product segments for starter infant formula, follow-on milk, GUMs and specialty formula. That is, customers are unlikely to substitute between these different types of product and will purchase the relevant products for the specific needs of their child (for their age-group or special dietary requirements).
45. From a supply-side perspective, while each product segment is distinct in terms of its ingredient composition, packaging and regulatory requirements, there appears to be a high degree of substitutability between the manufacturing processes for starter infant formula, follow-on milk, GUMs and specialty formula. Many suppliers supply a number of product types and suppliers appear to be able to switch between producing each product type without significant modification to their equipment or machinery. However, the ACCC understands that significant investment is required in undertaking research and development and active engagement with health care professionals (**HCPs**) in order to generate recommendations of a product. Such investment and the time involved in marketing a product may limit supply-side substitutability between product categories and between supply of IFFO Milk/GUMs.
46. At this stage of its inquiries, the ACCC considers it appropriate to define separate product markets for IFFO Milk and GUMs. The ACCC considers that separate product markets appear appropriate due to the distinct characteristics of IFFO Milk and GUMs in Australia, such as the specific and more stringent regulatory requirements and marketing restrictions applicable to IFFO Milk, suggesting that supply-side substitutability is asymmetric between these products. That is, while a supplier of IFFO Milk may switch or expand supply into GUMs, the reverse may not be as easy to achieve. In addition, GUMs products have historically been sold at a materially reduced retail price compared to IFFO Milk products.
47. The ACCC considers that regardless of the product market/s defined, market definition appears unlikely to be a determinative feature of the competition assessment for the proposed acquisition. This is because both merger parties have a significant presence in the supply of both IFFO Milk and GUMs.

## Geographic dimension

48. The ACCC considers that the appropriate geographic dimension of the market is national as:
- IFFO Milk and GUMs are durable in storage and can be transported globally. The ACCC understands that the vast majority of IFFO Milk and GUMs products supplied in Australia are manufactured at offshore

manufacturing plants in accordance with the requisite compositional standards and regulatory requirements such that they can then be transported and sold in Australia.

- there appear to be no consistent differences between IFFO Milk and GUMs sold in different regions of Australia, in terms of the product range or the price; and
- suppliers of IFFO Milk and GUMs generally develop national marketing strategies.

The ACCC invites comments from market participants on its proposed definition of the relevant markets. In particular, market participants may wish to comment on:

- (i) the ability of suppliers to switch between supplying IFFO Milk and GUMs products including the costs and timeframes associated with switching supply; and
- (ii) whether a separate market exists for the supply of specialty formulas or paediatric specialty formulas, for example due to the higher switching costs and timeframes involved in supplying specialty infant nutrition products.

## Market concentration

49. The proposed acquisition results in significant horizontal aggregation in both the IFFO Milk and GUMs markets. Nestle and Pfizer Nutrition are two of the three major suppliers in each of the relevant markets.

**Table 1: Shares of supply – Starter Infant Formula and Follow-On Milk (IFFO Milk) and Growing-Up Milks (GUMs) (2011)**

Supplier	Key Brand/s	IFFO Milk	GUMs
Nestlé	NAN HA, NAN Pro, NAN HA Gold, NAN Pro Gold, NAN AR, NAN Sensitive, Lactogen	21.5%	14.6%
Pfizer Nutrition	S-26 Original, S-26 Gold, S-26 Gold AR, S-26 Gold Lactose Free	38.2%	34.8%
Merged entity		59.7%	49.4%
Nutricia	Karicare/Aptamil Gold+ HA, Aptamil Gold+, Aptamil AR, Aptamil De-Lact, Karicare Complete, Neocate, Neocate Advance	30.7%	37.2%
Heinz	Heinz Nuture Original, Heinz Nuture Gold	4.5%	6.5%
Bellamy's Organic	Bellamy's Organic	1.8%	6.8%
Bayer	Novalac Colic, Novalac Constipation, Novalac Diarrhoea, Novalac Reflux	0.7%	n.a.
Abbott	Elecare, Isomil	0.7%	n.a.
Other	Aldi Mamia, Amcal	0.4%	n.a.
TOTAL		100%	100%

Source: AC Nielsen Scan Data FY2011 by value (retail sales – grocery and pharmacy)



50. Based on 2011 shares, the proposed acquisition would result in a merged Nestlé/Pfizer Nutrition becoming the largest supplier of IFFO Milk (~60%) and GUMs (~50%).
51. The ACCC understands that Nutricia has increased its share of supply in IFFO Milk and GUMs during 2012 and this will slightly lessen the aggregation which would result from the proposed acquisition (based on the FY2011 figures above).
52. The ACCC essentially views the proposed acquisition as a three to two merger. Post-acquisition, the market will be highly concentrated, with the top two players (a merged Nestlé/Pfizer and Nutricia) accounting for approximately 90% of sales.

## Statement of Issues

53. For the purposes of this Statement of Issues, the issues in this matter are divided into three categories, 'issues of concerns'; 'issues that may raise concerns' and 'issues unlikely to raise concerns'. Each of the issues detailed below applies to both of the relevant markets (IFFO Milk and GUMs).

## Issues of concern

### Removal of a close competitor

54. The ACCC considers that the proposed acquisition is likely to raise competition concerns as a result of the removal of Pfizer Nutrition – one of Nestlé's closest competitors in the supply of IFFO Milk and GUMs. The proposed acquisition would result in a significant increase in concentration in already concentrated markets, in particular for IFFO Milk, where barriers to entry and expansion appear high. The proposed acquisition would result in only two major suppliers controlling approximately 90% of sales in the relevant markets and appears likely to result in muted competition relative to the present market structure.
55. Market inquiries have suggested that Nestle, Pfizer Nutrition and Nutricia are the major suppliers of IFFO Milk and GUMs and compete most closely with each other. While there are a number of other smaller suppliers (for example, Bellamy's Organic, Bayer and Abbott) these market participants appear to predominantly focus on niche areas (such as organic products or specialty formulas), and do not appear to provide a particularly close competitive constraint on the major players across all distribution channels.
56. In particular categories of IFFO Milk and GUMs products, for example the premium category, Nestle and Pfizer Nutrition appear to be the largest suppliers. The ACCC understands that the premium category has the highest value share and highest growth out of any of the IFFO Milk and GUMs product categories.
57. If the proposed acquisition proceeds, the number of major suppliers of IFFO Milk and GUMs in each of the distribution channels (hospital, pharmacy and grocery/retail) would be reduced from three to two.

The ACCC invites comments on the potential competitive constraint likely to be imposed on a merged Nestlé/Pfizer Nutrition post acquisition in the supply of IFFO Milk and GUMs.

- (i) What is the degree of competitive constraint provided by Nutricia?

- (ii) Are the smaller suppliers of IFFO Milk and GUMs likely to provide a strong competitive constraint on Nestlé post-acquisition?

Barriers to entry and expansion

58. The ACCC considers that barriers to entry and expansion appear to be high for the supply of IFFO Milk and GUMs. Hence, the competition removed by the merger is not likely to be replaced in the foreseeable future and the proposed acquisition would likely result in the entrenchment of a dominant player and/or duopoly in the supply of IFFO Milk and GUMs.

High degree of existing brand loyalty

59. It appears that a key barrier to entry and expansion is the high degree of brand loyalty attached to the brands of the major incumbent suppliers of IFFO Milk and GUMs: Nestle (NAN), Pfizer Nutrition (S-26) and Nutricia (Karicare, Aptamil).
60. The ACCC considers that infant formula is a product with unique characteristics given it is a substitute for breast milk and in many instances is the sole source of nutrition for infants. In addition, given the fragile nature of newborns and infants, infant formula is often an emotional purchase for parents.
61. The ACCC understands that retail customers of IFFO Milk and GUMs tend to exhibit a high degree of brand loyalty and that brand loyalty is strong throughout the lifecycle of a customer's use of IFFO Milk and GUMs. That is, when a particular brand 'works' for a baby, brand loyalty continues throughout the different stages of the baby's development – from starter infant formula to follow-on milk to GUMs. Further, where a customer has multiple children, brand loyalty is similarly likely to remain strong for each subsequent child.
62. Many customers, in particular when purchasing premium and mainstream products, appear to be more concerned about reputation, credibility and quality rather than price. The ACCC understands that switching between brands of IFFO Milk and GUMs mainly occurs when an infant has digestive difficulties or does not 'take' to a particular brand.
63. Market inquiries have indicated that building the brand reputation and credibility of an infant formula takes a considerable amount of time and investment. Reputation and credibility is established over many years through suppliers actively engaging and building relationships with HCPs and a history of association with hospitals (as discussed below). Brand reputation and credibility is also influenced by word of mouth recommendations from friends and family.
64. The ACCC understands that the major infant formula suppliers subsidise the wholesale price at which they supply to hospitals. Given the brand awareness and credibility attached to being a supplier to hospitals, it is likely that suppliers have a strong incentive to win contracts/tenders for hospital supply. The ACCC considers that, in light of the high degree of customer brand loyalty, the primary source of competition between suppliers of IFFO Milk and GUMs is to have their brand as the 'first' brand of formula that the customer is recommended or uses.

Importance of recommendations from health care professionals

65. The ACCC understands that there is a strong correlation between the share of sales of infant formula and HCP recommendations. Accordingly, it appears that having a brand recommended by HCPs is central to building credibility and reputation and is very important to influencing a customer's purchasing decision and building subsequent and repeat sales in the grocery/retail and pharmacy channels.
66. The ACCC understands that, during their hospital stay, new mothers may be exposed to infant formula if they choose to receive formula supplementation or if complementary formula feeding is a medically indicated treatment. However, new mothers may seek infant formula recommendations some weeks or months following their stay in hospital if they begin either complementary or exclusive feeding of IFFO Milk. Notwithstanding that a significant proportion of new mothers may not be exposed to infant formula during their stay in hospital, the ACCC understands that supply of infant formula to the hospital channel nevertheless has an identifiable role in building brand credibility of IFFO Milk to HCPs and ultimately to new mothers when they are seeking infant formula recommendations. Infant formula recommendations may be sought from a range of HCPs involved in maternal health care. This potentially includes paediatricians, maternal and child health nurses, obstetricians, midwives, neonatologists, dieticians, general practitioners and pharmacists. HCPs may not necessarily recommend a particular brand of infant formula, but may instead provide advice on the differences between brands of infant formula.
67. The ACCC's market inquiries have confirmed that Nestlé, Pfizer Nutrition and Nutricia actively engage with HCPs and invest in field teams which seek to educate, update and promote their IFFO Milk and GUMs products to a range of HCPs.
68. In addition, Nestlé, Pfizer Nutrition and Nutricia are the key suppliers to the hospital channel. The ACCC understands that access to the hospital channel can assist in gaining recommendations from HCPs given the brand recognition and exposure that such supply provides. Supply into the hospital channel also attaches credibility and trust to brands of infant formula.
69. As manufacturers of IFFO Milk are prohibited from advertising or promoting infant formula directly to parents, recommendations from HCPs and the credibility attached to infant formula products supplied into hospitals appears especially important for generating future sales.

Importance of having an infant formula product backed by scientific credentials

70. The ACCC's market inquiries indicate that, in order to have a compelling and superior infant formula product to promote to HCPs and supply into hospitals, it is necessary to undertake significant investment in research and development on an ongoing basis.
71. The ACCC's market inquiries also indicate that Nestlé, Pfizer Nutrition and Nutricia each invest heavily in research and development of infant formula compositions and new formula ingredients in order that their products are 'backed by science' and may offer additional health benefits for infants and toddlers. It appears that such investment assists in promoting infant formula products to the medical community at large, including HCPs and hospitals.

Proliferation of incumbent supplier's brands

72. The major suppliers of IFFO Milk and GUMs each have multiple product offerings across a broad range of product segments and categories.
73. As shelf space in the major supermarket and pharmacy chains is a finite resource, the brand proliferation of these incumbent suppliers may result in only limited opportunities being available for further new entry and expansion.

The ACCC invites market participants to comment on:

- (i) What are the main determinants of a customer's choice of brand, particularly given that manufacturers of infant formula cannot advertise directly to the public?

Specifically, the ACCC is interested in understanding the relative importance of recommendations from each type of health care professional (paediatricians, midwives, maternal and child health nurses, neonatologists, dieticians, general practitioners, pharmacists, others) and whether this changes depending on the stage in the baby's development.

- (ii) What are the barriers faced by new entrants seeking to generate recommendations from HCPs?

In particular, the ACCC is interested in the investment required (including costs and time taken) to build relationships with HCPs, and whether this differs depending on the type of HCP (for example, paediatrician and maternal health and child nurse, compared with a retail pharmacist).

- (iii) What would a new entrant or an existing supplier require in order to supply to hospitals?

- (iv) Any examples of recent new entry or expansion including the nature of the entry (whether limited to a particular distribution channel and/or product niche), the time taken, the level of investment and the share of sales achieved.

Incentives for new entry by global suppliers

74. Another barrier to entry includes access to manufacturing facilities capable of producing infant formula which meet the Australian regulatory requirements on the composition of IFFO Milk and GUMs.
75. The ACCC considers that large multi-national manufacturers of IFFO Milk and GUMs are likely to have the ability to supply into Australia, by directing excess capacity at existing offshore manufacturing facilities to producing formula which complies with Australian standards. However, the ACCC considers it is likely that many multi-national manufacturers of IFFO Milk and GUMs which are not currently supplying into Australia lack the necessary incentive to commence supply into the Australian market.
76. Market inquiries have indicated that non-incumbent international manufacturers of formula are likely to be focussed on the more lucrative emerging markets in Asia, in which brand loyalty appears to be in its formative stages and significantly large sales volumes may be achieved, rather than the relatively flat IFFO Milk and GUMs markets in Australia which have established brand loyalty.

The ACCC invites comments on whether multi-national manufacturers of IFFO Milk and GUMs which do not currently supply into Australia are likely to have the ability and/or incentive to enter the Australian market.

### **Ability of the merged entity to raise prices or reduce existing level of promotions**

#### Grocery and pharmacy channel

77. If the proposed acquisition proceeds, the merged firm would account for a significant proportion of the sales of IFFO Milk (~60%) and GUMs (~50%) which occurs through the grocery/retail and pharmacy channels. The grocery channel is the largest supply channel accounting for ~75% of retail sales of IFFO Milk/GUMs while the pharmacy channel is the second largest supply channel accounting for ~25% of retail sales. Historically, the pharmacy channel was the major route to market for IFFO Milk. In recent years, the major supermarkets have increased their share of sales in IFFO Milk/GUMs at the expense of the pharmacy channel.
78. Based on current sales figures, a merged Nestle and Pfizer Nutrition would supply a significant volume (between 50-66%) of the major retailers' supply of IFFO Milk and GUMs products. Depending on the retailer and the particular product segment, the combined share of the merged firm may be higher.
79. The ACCC understands that IFFO Milk and GUMs products are a "basket driver" for the major supermarkets. That is, these products have the potential to influence customers switching between retailers as well as acting as a strong driver of repeat business. The ACCC understands that in general, if a customer's preferred brand of IFFO Milk or GUMs (in particular IFFO Milk) is not available in a particular retail outlet, the customer is more likely to switch retail stores to purchase their preferred brand than to switch brands. On the other hand, if there are promotions or discounts on a brand of infant formula, market inquiries suggest that existing customers of that brand are likely to "stock-up" and take advantage of the promotion, rather than customers of other brands switching to the discounted brand.
80. In light of the strong brand equity of Nestle and Pfizer Nutrition's infant formula products, as well as the substantial share of sales the merged firm would account for post-acquisition, the ACCC is concerned that the proposed acquisition may provide the merged firm with the ability to raise wholesale prices and/or reduce the level or frequency of the promotions/discounts that it currently offers to retailers.

#### Countervailing power

81. The ACCC considers that the degree of countervailing power held by the major retailers and wholesale suppliers to pharmacies in respect of IFFO Milk and GUMs may be limited. Countervailing power exists when buyers have the ability to credibly threaten to bypass the supplier. This may occur by vertically integrating into the upstream market, or sponsoring new entry or expansion of a competing supplier.

82. Retailers could place pressure on suppliers by developing their own private label or home brand baby formula. However, market inquiries have strongly indicated that private label entry by the major supermarkets is highly unlikely for IFFO Milk and GUMs. Market inquiries suggest that entering into the supply of private label IFFO Milk and GUMs involves considerable risks to a major retailer's overall reputation if any quality issues arise in the manufacturing or supply of the private label product.
83. In any event, without the necessary investment in brand credibility and in building relationships with HCPs, the ACCC considers that retailers' private label IFFO Milk and GUMs products appear unlikely to pose a close constraint on the IFFO Milk and GUMs products supplied by the merged entity.

The ACCC invites comments from market participants on:

- (i) the likelihood of supermarkets or other retailers, including pharmacies, entering into the private label supply of infant formula and toddler milk;
- (ii) the extent to which private label infant formula and toddler milk is, or would be, a competitive constraint on branded infant formula and toddler milk; and
- (iii) the success to date and competitive constraint offered by Aldi's 'Mamia' infant formula and toddler milk products and Amcal's private label IFFO Milk product to the major incumbent suppliers.

84. Market inquiries have indicated that the brands offered by Nestlé and Pfizer Nutrition are seen as "must have" brands for major retailers. The established brand loyalty of the merger parties' infant formula products and their importance for retaining high value retail customers would appear to limit the ability of the major retailers and pharmacies to remove (or credibly threaten to remove) the products of the merger parties and replace them with a competitor's products.
85. The ACCC is continuing to explore the relative negotiating positions of the merged firm and the major wholesale customers of IFFO Milk and GUMs products, including the ability of wholesale customers to:
- discipline the merged entity by supporting the expansion of a competing supplier of IFFO Milk and/or GUMs products (such expansion may occur by increasing the promotions or catalogue/shelf space of competing suppliers); or
  - impose costs on the merged entity, or constrain wholesale price rises, by refusing to buy or support other products supplied by Nestle which are not "must have" brands or are otherwise not "basket drivers".
86. Market inquiries have indicated that the recent everyday low price strategies of Coles and Woolworths have seen retail prices for some IFFO Milk and GUMs products fall by between 15% and 30%. However, it is unclear whether wholesale prices have decreased as significantly (or at all). The ACCC understands that there has been variation amongst suppliers of IFFO Milk and GUMs as to the extent of wholesale price support provided to the major supermarkets. The extent of price support provided is likely to reflect the degree of pricing power held by the relevant supplier.

87. The ACCC is continuing to explore whether the supermarkets' low price strategies are an example of their buyer power in relation to IFFO Milk and GUMs products.

The ACCC invites market participants to comment on the importance of IFFO Milk and GUMs products to major supermarkets/retail outlets and pharmacy retail chains.

- (i) Are the IFFO Milk and GUMs brands supplied by Nestle and Pfizer “must have” or “key” brands? If so, to what extent can large wholesale customers of IFFO Milk and GUMs support the expansion of new entrants or smaller suppliers?
- (ii) If a retail customer's preferred brand of IFFO Milk/GUMs is not available on the shelf of a retail outlet, what is the likely result? To what extent will this result in retail customers switching to alternative retail outlets?
- (iii) Are retail customers of IFFO Milk/GUMs typically high value (full trolley) shoppers?
- (iv) Would the merged firm be likely to have an increased ability to raise wholesale prices or reduce existing levels or frequency of discounting of IFFO Milk and/or GUMs (by reducing promotional funding support or otherwise) in its negotiations with major wholesale customers?
- (v) To what extent would a merged Nestle/Pfizer have increased pricing power post-acquisition in its negotiations with the major supermarkets and/or wholesale suppliers to the retail pharmacy chains? Have the recent reductions in the retail price of baby formula resulted in a reduction in supermarket/pharmacy retail margins or have formula suppliers reduced their wholesale price and/or offered additional price support?
- (vi) Whether the major supermarkets are likely to discipline Nestle post-acquisition as a result of its dependency upon these buyers across Nestle's entire product range?
- (vii) To what extent could a merged Nestlé/Pfizer bypass (either partially or completely) the grocery/retail channel for the supply of IFFO Milk/GUMs and focus on supplying the pharmacy channel? Does the pharmacy channel offer similar convenience for customers of IFFO Milk/GUMs?

#### Hospital channel

88. In the hospital channel, post-acquisition the merged entity would be one of only two suppliers of IFFO Milk and would supply a high proportion of the overall share of IFFO Milk products to hospitals.
89. Given the importance of the hospital channel to the credibility of a brand of infant formula and to building subsequent sales at the retail level, market inquiries suggest that suppliers of IFFO Milk subsidise the price of IFFO Milk to hospitals in order to be the supplier to the hospital. The ACCC is continuing to explore the impact of a reduction from three to two suppliers on wholesale prices or terms of supply to hospitals.
90. The ACCC understands that the public hospital system typically purchases IFFO Milk by formal tender, and that certain private hospitals conduct informal tender processes.

The ACCC invites comments from market participants on:

- (i) Whether the procurement practices of either public or private hospital groups is likely to constrain any ability of the merged firm to raise prices in its supply of IFFO Milk to hospitals?
- (ii) Is Nutricia, or smaller suppliers, likely to sufficiently constrain Nestlé post-acquisition for the supply to hospitals?
- (iii) What barriers to entry arise for smaller suppliers in seeking to supply IFFO Milk to hospitals?

### **Increased potential for coordinated conduct**

- 91. When assessing whether a merger is likely to give rise to coordinated effects, the ACCC assesses whether conditions in the relevant market(s) are likely to be conducive to coordinated conduct by assisting firms in explicitly or implicitly coordinating their pricing, output or related commercial decisions.
- 92. The proposed acquisition would reduce the number of major suppliers of IFFO Milk and GUMs that participate across all distribution channels from three to two. Further, the relevant markets would be highly concentrated with the top two players (a merged Nestlé/Pfizer Nutrition and Nutricia) controlling around 90% of the market.
- 93. As a result, the proposed acquisition would reduce the number of firms among which to coordinate (thereby enhancing the ability to reach and maintain a consensus) and may increase the likelihood of coordinated conduct between the major suppliers of IFFO Milk and GUMs. Coordinated conduct may lead to muted competition between the major firms such as higher wholesale prices or a reduction in the level or frequency of price promotions/discounts.

The ACCC invites comments from market participants on whether the proposed acquisition would increase the likelihood of coordinated conduct.

- (i) How volatile are the cost structures of underlying inputs for the supply of IFFO Milk and GUMs products?
- (ii) In light of the different additional formula ingredients (over and above the required composition standards), do the underlying input costs of competing IFFO Milk and GUMs suppliers vary significantly?
- (iii) In light of the different manufacturing locations of global suppliers of IFFO Milk and GUMs products, do exchange rate fluctuations inhibit any ability to coordinate conduct?
- (iv) Whether there is an increased risk of coordinated conduct in hospital supply tenders post-acquisition as a result of having only two hospital suppliers of IFFO Milk?



## Issues that may raise concerns

### Reduction in the level of choice

94. Pfizer Nutrition is currently one of only three suppliers (the others being Nestlé and Nutricia) with a presence across all distribution channels (grocery/retail, pharmacy and hospital) and with a full product range across the value, mainstream, premium/gold and specialty categories.
95. The ACCC understands that one of the ways in which the major brands of IFFO Milk and GUMs seek to differentiate their products is on the basis of their scientific credentials and through research and development (**R&D**) into new formula ingredients. The ACCC understands that the major suppliers of infant formula, including Pfizer Nutrition, invest significantly in R&D and scientific development for IFFO Milk and GUMs.
96. The proposed acquisition may lead to the consolidation of Nestle and Pfizer Nutrition's infant nutrition R&D and product development facilities. The ACCC is concerned that this may result in the removal of Pfizer Nutrition as an independent source of R&D and the loss of S-26 as an alternative and differentiated product offering. This could potentially lessen the choices available to customers due to a more standardised product offering in the relevant markets.

The ACCC invites comments from market participants on the impact of the proposed acquisition on the level of choice available to the customers. In particular, what are the key differences between the products offered by Pfizer Nutrition and the other IFFO Milk and GUMs suppliers?

## Issues unlikely to pose concerns

### Supply of inputs

97. In the event that the merged entity was to source supply of inputs for its IFFO Milk and GUMs products from milk powder plants in Australia and New Zealand, concerns have been raised that this may limit the ability of rival suppliers of IFFO Milk/GUMs to source necessary inputs locally.
98. The ACCC understands that there are a number of milk powder plants within Australia and New Zealand that are capable of supplying milk powder under contract manufacturing arrangements. Further, the ACCC understands that the vast majority of manufacturing for IFFO Milk and GUMs products supplied in Australia occurs overseas and that the necessary inputs for IFFO Milk and GUMs products can be sourced from overseas.
99. The ACCC considers that the proposed acquisition appears unlikely to pose concerns with respect to the ability of rival suppliers of IFFO Milk/GUMs to source supply of the necessary inputs for manufacturing these products in Australia.

The ACCC invites comments from market participants on whether the proposed acquisition is likely to have an impact on any input markets for IFFO Milk/GUMs.

## Proposed section 87B undertaking

100. Nestle has initiated discussions with the ACCC regarding a possible undertaking pursuant to section 87B of the CCA to address any competition concerns that the ACCC may have with the proposed acquisition. The broad principles of the remedy foreshadowed by Nestlé are detailed below and a description of the business proposed to be divested by Nestlé (with the cooperation of Pfizer) is outlined in **Attachment A**.
101. The ACCC is continuing its assessment of the proposed acquisition to determine whether it would be likely to have the effect of substantially lessening competition in any market — this has involved further market inquiries and now the release of this Statement of Issues with a further round of inquiries to follow. The ACCC is therefore not currently in a position to form a view as to the necessity of any remedy. In addition, the ACCC is not in a position to form a view about the efficacy or acceptability of a remedy of the kind foreshadowed by Nestlé.
102. However, in the interests of streamlining the process, the ACCC is seeking preliminary market feedback on the broad principles of the proposed remedy. While the ACCC has agreed to consult on these broad principles, this should not be taken to represent any view of the ACCC that such a remedy may be capable of addressing the competition concerns outlined in this Statement of Issues.
103. Subject to market feedback on the broad principles of the proposed remedy and the results of further inquiries on the potential competition concerns identified, the ACCC will form a view whether to commence market consultation on any detailed section 87B undertaking provided by Nestlé.

## Broad principles of the proposed remedy

104. The proposed remedy offered by Nestlé involves:
- Nestlé to licence Pfizer Nutrition's Australian infant nutrition business' brand portfolio to a licensee to be approved by the ACCC (**Purchaser**) including:
    - on an exclusive basis, the trademarks currently in use in respect of the Pfizer Nutrition products in Australia; and
    - on a non-exclusive basis, the recipes/formulations of products currently sold in Australia and other manufacturing related intellectual property for the Australian marketed products;
  - The exclusive licence in relation to the trademarks currently in use in respect of the Pfizer Nutrition products in Australia would have a term of five years and cover Australia but allow the Purchaser to manufacture the licensed products outside Australia for sale in Australia;
  - The non-exclusive licence to the recipes/formulations of products currently sold in Australia and other manufacturing related intellectual property for the Australian marketed products would run for the duration of the relevant underlying intellectual property right and cover Australia but allow the

Purchaser to manufacture the licensed products outside Australia for sale in Australia;

- For a period of five years after the expiration of the exclusive licence, Nestlé would undertake not to re-introduce into Australia any of the trademarks that are currently in use in respect of the Pfizer Nutrition products in Australia;
  - Nestlé/Pfizer would provide transitional support and services to the Purchaser, for example, to assist the Purchaser to obtain any necessary consents and approvals and to provide 'back office' functions;
  - Nestlé would sell the Purchaser existing inventory of the products of the Divestiture Business (i.e., S26 and SMA products) and also enter into a transitional product supply agreement with the Purchaser to ensure the Purchaser had ready and ongoing access to inventory of S26 and SMA products;
  - Nestlé Australia would not have visibility of any orders placed by the Purchaser for S26 or SMA products.
105. Nestlé advises that during the five year duration of the exclusive licence, the Purchaser would have the opportunity to transition and re-brand its existing products and in the subsequent five year 'blackout' period during which Nestlé commits not to re-introduce any of Pfizer Nutrition's Australian infant nutrition brands into Australia, it is envisaged that the Purchaser would have the opportunity to build brand equity of the re-branded products.

The ACCC invites comments from market participants on the broad principles of the proposed remedy put forward by Nestlé. In providing a response, market participants may wish to consider:

- (i) the utility of such an undertaking, particularly in light of the ACCC's potential competition concerns outlined above;
- (ii) the potential risks associated with the undertaking terms put forward by Nestlé , including but not limited to:
  - a. whether the grant of an exclusive licence of the trademarks for a five year period followed by a five year 'black-out' period, is likely to enable the Purchaser to successfully transition and re-brand its existing products and be a viable, effective, stand-alone, independent and long-term competitor to the merged entity in each of the relevant markets going forward;
  - b. whether the grant of a non-exclusive licence of the recipes/formulations and other manufacturing related intellectual property is likely to enable the Purchaser to seamlessly transition to independently manufacturing its own recipe/formulation;
- (iii) whether the transitional support and services proposed by Nestle would result in an ongoing dependence by the Purchaser on Nestlé going forward, or increase the risk of co-ordinated conduct between the parties; and
- (iv) any other comments you have in relation to the terms of the undertaking put forward by Nestlé.

### **Necessary attributes of any proposed purchaser**

106. The ACCC notes that the proposed acquisition of Pfizer Nutrition by Nestlé would result in the removal of a key competitor which has significant presence in all product segments (value, mainstream, premium/gold and specialty) and which has an established long-standing brand of trust and heritage.
107. Any potential remedy would need to be enduring in nature and allow the Purchaser to be a viable, effective, stand-alone, independent and long-term competitor to the merged entity in each of the relevant markets.
108. At a minimum, for the remedy to be effective, a temporary licence to Pfizer Nutrition's brands and other relevant assets would need to be sufficient to allow the Purchaser to transition to new brands using its own independent manufacturing processes and intellectual property, including product recipes. The ACCC must be satisfied that following this transition the Purchaser would continue to provide a strong, ongoing competitive offering through all distribution channels.
109. As previously outlined, the ACCC has not formed a view upon whether the broad principles of the proposed remedy are capable of addressing the competition concerns identified in this Statement of Issues. However, the ACCC considers that for any remedy to be effective it would be critical that any Purchaser has:
  - proven expertise in the manufacture and supply of the relevant products;
  - the capabilities to manufacture the products independently of Nestlé in a reasonable timeframe;
  - the resources and incentive to continue to invest in R&D to maintain the brand's position in the Australian marketplace; and
  - the requisite credibility in supplying IFFO Milk products such that it will be able to maintain supply to hospitals and continue to actively target HCPs (which are a key driver of subsequent sales in the grocery and pharmacy channels).

### **ACCC's future steps**

110. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
111. The ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter.
112. Submissions are to be received by the ACCC no later than **14 September 2012**. The ACCC will consider the submissions received from the market and the merger parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view in light of the issues raised above.

113. The ACCC intends to publicly announce its final view by **11 October 2012**. However the anticipated timeline may change in line with the Merger Review Process Guidelines. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement.

**Divestiture Business**

Licence of the Divestiture Brands and associated intellectual property

1 Divestiture Brands

Grant the Purchaser a fully paid-up 5 year licence for exclusive use in Australia of the trademarks for, and the exclusive right to manufacture for distribution and sale in Australia, the following Pfizer Nutrition brands currently used in Australia:

- SMA;
- S-26 (including S-26 Newborn, S-26 Progress and S-26 LF); and
- S-26 Gold (including S-26 Gold Newborn, S-26 Gold Progress, S-26 Gold Toddler, S-26 Gold RTF, S-26 Gold Premgro, S-26 Gold AR, S-26 Gold Soy and S-26 Gold LF);

(together the “Divestiture Brands”).

Nestlé commits not to reintroduce the Divestiture Brands in Australia for a period of 5 years after the date that the term of the exclusive 5 year licence to the Purchaser expires (the “Black Out Period”). For the avoidance of doubt, Nestlé will be entitled to use the Divestiture Brands in Australia after the expiration of the Black Out Period.

Subject to confirmation (which is currently being undertaken), the trademarks that will be the subject of the 5 year exclusive licence to the Purchaser will be as follows:

Trade Marks

Trademark	Application No.	Original Application Date
LactaCare Gold	1024208	8-Oct-2004
S-26 FORTIFY	1071283	22-Aug-2005
LactaCare Gold	1024208	8-Oct-2004
S-26 FORTIFY	1071283	22-Aug-2005
INFASOY	341391	21-Dec-1979
PERFECT MIX 26	1309524	13-Jul-2009
PROGRESS	474796	16-Oct-1987
PROGRESS	474795	16-Oct-1987
PROGRESS GOLD	817197	14-Dec-1999

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	PROMIL	168767	29-Aug-1961
	S-26	778493	16-Nov-1998
	S-26	1304458	15-Jun-2009
	S-26 AR	778495	16-Nov-1998
	S-26 EH	898766	9-Aug-2011
	S-26 GOLD	749734	27-Nov-1997
	S-26 GOLD	749734	27-Nov-1997
	S-26 GOLD (IN OVAL LOGO)	778496	16-Nov-1998
	S-26 GOLD ALPHA PRO	999149	22-Apr-2004
	S-26 GOLD PREMGRO	1289494	12-Mar-2009
	S-26 GOLD PREMGRO	1289494	12-Mar-2009
	S-26 HA	888141	4-Sep-2001
	S-26 IN OVAL	203687	21-Jul-1966
	S-26 LBW GOLD	954948	22-May-2003
	S-26 LF (WORDS)	778494	16-Nov-1998
	S-26 LF LOGO	748515	12-Nov-1997
	S-26 LF LOGO	748515	12-Nov-1997
	S-26 PROGRESS	868202	6-Mar-2001
	S-26 PROGRESS GOLD	868199	6-Mar-2001
	S-26 SOY	1142084	19-Oct-2006
	S-26AR LOGO	748514	12-Nov-1997
	S-26AR LOGO	748514	12-Nov-1997
	SMA	1304457	15-Jun-2009
	SMA	1304457	15-Jun-2009
	SMA DESIGN (Stylized)	551675	6-Mar-1991
	SMA DESIGN (stylized)	748095	6-Nov-1997
	SMA TRADEMARK DEVICE	86047	11-Feb-1946
	SMA TRADEMARK DEVICE	163286	11-Feb-1946
	TEPO	1361932	14-May-2010

**Attachment A****2 Associated intellectual property**

Nestlé will also grant the Purchaser a non-exclusive licence to the recipes/formulations of products currently sold in Australia and other manufacturing related intellectual property for the Australian marketed products, comprising the intellectual property set out in sections 2(a) and 2(b) below. The licence would run for the duration of the relevant underlying intellectual property right:

**(b) Patents**

In addition, subject to confirmation (which is currently being undertaken) Nestlé will provide a fully-paid up licence, for the duration of the relevant underlying intellectual property right, to the following intellectual property solely for use in producing the product for the Divestiture Business in Australia.

Patent	Application No.	Patent No.
Apparatus And Method For Radiation Processing Of Fluent Food Products	2006212743	2006212743
Infant Formula Compositions Containing Lutein And Zeaxanthin	2003251396	2003251396
A Fluid Container	2009211847	
Infant Formula Compositions Comprising Increased Amounts Of Alpha-lactalbumin	2002357354	2002357354
Bottle With Cap	13974/2008	322268
Infant Formula Containing Nucleotides	2010203123	
Infant Formula Container	11986/2011	336869
Infant Formula Containing Nucleotides	3770690	E419759

**(c) Other manufacturing related IP**

Nestlé will license, for the duration of the relevant underlying intellectual property right, the recipes/formulations for the current Australian marketed products together with any other manufacturing technical knowhow and agree to provide reasonable assistance with the technology transfer to support on-going manufacturing activities.



**Attachment A**

	Nestlé will also enter into an agreement to give the Approved Purchaser access to the results of clinical research about SMA, S-26 and S-26 Gold products sold at closing, including product testing for the period of 5 years.
<b>Supply</b>	Enter into an exclusive transitional product supply agreement (on commercial terms) to supply the Approved Purchaser with the SMA, S-26 and S-26 Gold products in Australia for a period of up to 5 years
<b>Real Property</b>	<p>Transitional real estate arrangements whereby the divestiture buyer may continue to utilise a portion of Pfizer's premises at its West Ryde Headquarters in Sydney (which is a shared site with other Pfizer business units).</p> <p>Nestlé has asked for a 12 month Transitional Services Agreement with respect to the premises that are currently used by Pfizer Nutrition's employees. Pfizer is agreeable to this arrangement. The parties will finalise these arrangements in due course.</p>
<b>Permits</b>	All permits, licences, consents, planning permissions, product registrations, certifications or authorisations issued by a government agency and related documentation and used exclusively in connection with the Divestiture Business, if any, in each case, to the extent transferable.
<b>Inventory</b>	All Inventory used or intended for use exclusively in connection with the Divestiture Business, being finished goods, packaging, advertising, and marketing materials, catalogues, stationary and including items in transit from a supplier or to a customer or on consignment with a customer owned by the Divestiture Business at closing (" <b>Inventory</b> ").
<b>Goodwill</b>	The Goodwill of the Divestiture Business.
<b>Employees</b>	Transfer of all the employees currently engaged in Australia solely in the Pfizer Nutrition Australia business (around 66 today).
<b>Fixed assets</b>	<p>Nestlé will sell:</p> <ul style="list-style-type: none"> <li>▪ any finished goods inventory owned by Pfizer affiliates and located within Australia at close;</li> <li>▪ all advertising, marketing, sales and promotional materials relating solely to the Pfizer Nutrition business owned by Pfizer affiliates and located within Australia at closing; and</li> <li>▪ any personal computers and vehicles used solely by conveyed employees in respect of the Pfizer Nutrition</li> </ul>

**Attachment A**

	business.
<b>Business Records</b>	All customer and vendor lists, and business, financial and legal records, books, documents, literature, files, information and materials, to the extent any of the foregoing are used solely in the Divestiture Business and relate solely to such customers and vendors of the Divestiture Business.
<b>Contracts</b>	Novate or assign all contracts, sales orders, purchase orders, instruments and other commitments, obligations and arrangements relating solely to the Divestiture Business, in each case, to the extent transferable.
<b>Transitional Services from the parties</b>	The parties will negotiate the provision of transitional services by the parties to the Approved Purchaser.