*Public Competition Assessment*

*22 January 2010*

# *GUD Holdings Limited - proposed acquisition of Breville Group Limited*

## Introduction

1. On 16 December 2009, the Australian Competition and Consumer Commission (**ACCC**) announced its decision to oppose the proposed acquisition of Breville Group Limited (**BRG**) by GUD Holdings Limited (**GUD**) (the **proposed acquisition**). The ACCC was of the view that the proposed acquisition would be likely to have the effect of substantially lessening competition in several markets for the wholesale supply of small electrical appliances in Australia in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).

2. The ACCC formed its view on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.

## Public Competition Assessment

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
   - a merger is opposed;
   - a merger is subject to enforceable undertakings;
   - the merger parties seek such disclosure; or
   - a merger is not opposed but raises important issues that the ACCC considers should be made public.

4. This Public Competition Assessment has been issued because the proposed acquisition is considered to raise issues of interest to the public, because the parties sought such disclosure and because the ACCC decided to oppose the proposed acquisition.

5. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the public to the

circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change.

6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.

7. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

## The parties

*The acquirer: GUD Holdings Limited*

8. GUD is an ASX listed Australian manufacturing and marketing company. The relevant parts of GUD's business for the ACCC's review of the proposed acquisition are GUD's Sunbeam and Emjoi small electrical appliances businesses.

9. GUD's Sunbeam small electrical appliance business (**Sunbeam**) markets and supplies small electrical household appliances in Australia. The Sunbeam business includes product design and sourcing products from international manufacturers to be supplied in Australia under the Sunbeam brand.

10. Sunbeam is one of Australia's leading small electrical appliance brands. Sunbeam supplies a comprehensive range of branded household products mostly at mid to premium price points. Sunbeam products are generally sold in department stores, discount department stores (sometimes referred to as mass merchants) and by specialist electrical retailers.

11. GUD's Emjoi small electrical appliance business (**Emjoi**) markets and supplies personal care appliances, including ladies shaving and epilation products.

*The target: Breville Group Limited*

12. BRG (previously known as Housewares International Limited) is an ASX listed company that primarily wholesales and markets small electrical appliances. Its small electrical appliance business comprises five brands, being Breville, Kambrook, Ronson, Goldair and Philips. All of these brands are company owned, except for Philips. BRG has an exclusive arrangement to distribute Philips branded products in Australia and New Zealand.

13. Breville is one of Australia's leading brands in small electrical appliances, offering a large range of household products. Breville products are generally sold in department stores, discount department stores and by specialist electrical retailers. Breville products are generally supplied at mid to premium price points.

14. The Kambrook range of products is more limited, when compared to the Breville and Sunbeam ranges, and is ordinarily supplied at entry to mid price points. Although sold in some department stores, Kambrook products are generally sold in discount department stores and specialist electrical retail outlets.

15. The Philips range is focused on personal care products (including shavers) and irons. Philips market presence in relation to small electrical appliances beyond these product areas is limited. The Philips range of products is generally supplied at mid to premium price points.

16. Goldair primarily covers portable home heating and cooling products. The Ronson brand covers a limited range of entry to mid priced kitchen appliances.

## The proposed transaction

17. On 9 October 2009 GUD announced its intention to make an off-market takeover bid for all the shares it did not already own in BRG (GUD owned approximately 19% of the shares in BRG at that time).

18. The ACCC notes that GUD's takeover offer for all the ordinary shares in BRG dated 26 October 2009 will remain open until 5 February 2010. The offer remains subject to a condition that the ACCC not commence, or threaten to commence, legal proceedings seeking to restrain the proposed acquisition. GUD has undertaken to the ACCC that it will not waive this condition or declare the takeover bid free from this condition without first providing the ACCC with notice of its intention to do so.

## Industry background

19. Most small electrical appliance products sold in Australia are not manufactured domestically. Most small electrical appliances are manufactured in China and imported to Australia by wholesale suppliers (such as GUD and BRG) or retailers (in the case of house brands).

20. Wholesale suppliers or retailers either (or both):

- design and develop appliances, which may include some unique technology or other intellectual property, and engage an overseas manufacturer to manufacture the appliances on their behalf.

- purchase appliances 'off the shelf' from an overseas manufacturer. Generally, the suppliers will acquire exclusive rights to market and supply the appliance within a defined geographic area. Manufacturers may proactively approach small electrical appliance wholesalers or retailers and offer to supply them with the appliance or the suppliers may actively 'shop' for appliances at international trade shows.

21. For at least 10 years, China has been the major manufacturer of small electrical appliances supplied to the world. Chinese manufacturers generally manufacture appliances which are distributed, marketed and sold by other companies at the wholesale and retail level.

22. Small electrical appliance products are generally supplied in Australia by:

- sales and marketing organisations (wholesale suppliers) that wholesale appliances (often branded) to retailers; or

- retailers who supply unbranded or 'house' branded appliances that they source directly from manufacturers.

23. Small electrical appliance products are supplied to end consumers through the following major channels:

- Department stores (such as Myer, Harvey Norman, David Jones and Harris Scarfe);

- Discount department stores (such as K-mart, Target and Big W); and

- Specialist electrical retail groups (such as Retravision, The Good Guys and Betta).

**Areas of overlap**

24. GUD and BRG are both major wholesale suppliers of small electrical appliances. GUD and BRG wholesale an extensive range of small appliances throughout Australia. The overlap in appliances is extensive. There are very few small appliances where GUD and BRG are not wholesalers. For most small appliances, both GUD and BRG offer a significant number of models. Most of these models straddle the same or similar price points. GUD and BRG supply their products through the same retail channels and retailers.

## Timing

25. The following table outlines the timeline of key events in this matter.

| Date | Event |
|---|---|
| 09-Oct-2009 | ACCC commenced review under the Merger Review Process Guidelines. |
| 23-Oct-2009 | Closing date for submissions from interested parties. |
| 06-Nov-2009 | ACCC requested further information from GUD. |
| 13-Nov-2009 | ACCC timeline suspended pending receipt of further information from GUD. |
| 26-Nov-2009 | Former proposed date for announcement of ACCC's findings, deferred to allow GUD additional time to provide requested information. |
| 01-Dec-2009 | ACCC received further information from GUD. ACCC timeline recommenced. |
| 16-Dec-2009 | ACCC announced it would oppose the proposed acquisition. |

## Market inquiries

26. The ACCC conducted market inquiries with a range of industry participants, including wholesale suppliers of small appliances, retailers of small appliances and other interested parties. Submissions were received from a number of parties.

## With/without test

27. In assessing a merger pursuant to section 50 of the Act, the ACCC must consider the effects of the transaction by comparing the likely competitive environment post-merger if the transaction proceeds (the “with” position) to the likely competitive environment if the transaction does not proceed (the “without” position).

28. Information available to the ACCC indicated that, in the absence of the proposed acquisition, GUD and BRG would continue to operate as viable and independent businesses. Accordingly, the proposed acquisition was assessed on that basis.

## Market definition

29. The ACCC formed the view that the relevant markets for the purpose of this matter were likely to be national markets for the wholesale supply of:

- Beverage makers (e.g. coffee makers, kettles, juicers);
- Cooking equipment (e.g. toasters, electric fry pans, sandwich makers);
- Food preparation equipment (e.g. blenders, mixers, food processors);

- Home appliances (e.g. irons, heaters); and
- Personal care products (e.g. shavers, hair dryers, electric toothbrushes).

30. In forming this view, the ACCC noted that there were some arguments for defining the product dimension of the relevant markets more broadly, that is, as a national wholesale market for the supply of all small electrical appliance products, or more narrowly, that is as a number of national wholesale markets for the supply of specific appliances.

31. The ACCC concluded that on balance, having regard to the information before it, the relevant markets were more appropriately defined on the basis of the product categories listed above. Nevertheless, the ACCC did not form a concluded view on market definition in this matter, as it found that on any of the three possible market definitions outlined below, the proposed acquisition was likely to result in a substantial lessening of competition.

*Geographic dimension*

32. The ACCC concluded that the geographic scope of each of the relevant markets was national. Market inquiries revealed that wholesalers deal with retail buyers on a national level and have national distribution networks for their products, all of which are imported. Advertising for small electrical appliances by wholesale and retail suppliers is also largely conducted on a national basis.

*Product dimension*

33. The ACCC identified three possible alternatives when considering the product dimension of the market in this matter:

    - A wholesale market for all small electrical appliance products;
    - Wholesale markets based on product categories (e.g. beverage makers, cooking equipment, etc); or
    - Wholesale markets based on individual appliances (e.g. irons, toasters etc)

34. On the demand side, the ACCC found that different appliances are not generally close substitutes for consumers. That is, when faced with a small but significant increase in price, consumers would be unlikely to substitute their purchase of a particular small electrical appliance with another type of product. For example, when faced with an increase in the price of toasters, a consumer would be unlikely to be equally as satisfied purchasing a kettle. Nevertheless, there is likely to be some degree of demand-side substitution within product categories given that many small appliances have multiple functions (e.g. toasters, grillers, compact ovens and sandwich presses can all be used to toast bread).

35. When defining the product dimensions of the relevant markets, the ACCC also considered what products (or group of products) may be close substitutes from a supply perspective. Whether or not two products are supply-side substitutes depends on the ability and incentive for suppliers of one of the products to commence supplying the other product in a timely fashion.

36. As noted in the ACCC's Merger Guidelines, a product (or group of products) may be a supply-side substitute for a product if in response to an increase in the price of the product:

- the production facilities and marketing efforts used for that product can be switched quickly and without significant investment to supply a demand-side substitute for the product

- it would be profitable for the current suppliers of the product to make these changes – that is, profits earned on the assets in their current use would be less than if they were switched to supply a demand-side substitute for the product (see paragraph 4.23).

37. In this case, market inquiries showed that wholesale suppliers do not appear to face significant difficulties in sourcing appliances from overseas manufacturers. If a wholesale supplier of toasters wished to commence supplying kettles, it appears that the supplier would have little difficulty in finding a manufacturer to produce the kettles on its behalf.

38. The most significant cost in supplying a different appliance is the investment required to establish brand name reputation. Brand name reputation is an important determinant of many consumers' decisions in purchasing a small appliance. Additionally, wholesale suppliers, particularly of branded products, need to make some investment in product design and innovation so as to differentiate themselves from other suppliers and to attract customers.

39. Market inquiries indicated that significant time and investment is required to develop a brand name in a product category. In particular, market inquiries indicated that suppliers face significant reputational barriers in transferring the success of a brand to different product categories. The ACCC also noted that the time and investment associated with development of brand name reputation could impact on the ability to switch between products within a product category.

40. Market inquiries indicated that suppliers typically focus on, and are successful in, supplying appliances within particular product categories (although the ACCC notes that some suppliers, including the merger parties, have been successful across several product categories).

41. Although finely balanced, the ACCC formed the view that the product dimension of the relevant markets should be defined on the basis of separate product categories.

42. Nevertheless, the ACCC considered that it was not necessary to form a definitive view as to whether the markets should be more narrowly or more broadly defined in this matter, as it would not impact significantly on the competition analysis undertaken.

43. Essentially, firms falling outside the market may still be taken into consideration in assessing the competitive impact of a merger as potential entrants (to the extent that such entry is likely, timely and sufficient).

44. The distinction between categorising a firm as producing a supply-side substitute (and hence being part of the market) or categorising the firm as a potential entrant (and hence being outside the market) involves judgement. The more significant the investment necessary to compete effectively, the more likely it is the firm will be considered as a potential entrant.

45. As noted in the ACCC's Merger Guidelines:

> While a distinction is made between supply-side substitution and new entry for market definition purposes, the relevant consideration in establishing a substantial lessening of competition is the degree of competitive constraint imposed on the merged firm by either firms in the market or new entrants (see paragraph 4.26)

46. In this matter, the ACCC concluded that if a narrower appliance specific market definition was adopted, other suppliers of small electrical appliances should be taken into account in terms of potential entry. Equally, if a broader small electrical appliances market definition was adopted, it would still be appropriate to identify the closeness of competition with other firms in the market.

47. The ACCC also considered whether product categories could be further segmented into markets based on categories of 'entry', 'mid' or 'premium' products. Market inquiries indicated that suppliers typically concentrate on positioning their range of products within one of these areas, which are based on features and benefits as well as price.

48. However, market inquiries also suggested that for consumers, there is likely to be a certain degree of substitution between products at the entry, mid or premium price points (particularly at the margins).

49. The ACCC formed the view that the relevant product category markets should include entry, mid, and premium level products, but noted that there was significant product differentiation within the markets and thus the degree of substitutability between products within the markets varied. Such product differentiation was particularly relevant in assessing the closeness of competition between the merger parties and other competitors, and the ability of competitors (in particular house brands) to act as a competitive constraint on the merged firm.

*Summary on market definition*

50. The ACCC considered that the most appropriate markets in which to consider the competitive effects of the proposed acquisition are national markets for the wholesale supply of small electrical appliances grouped according to use and function, as follows:

- **Beverage Makers**: being products that include coffee makers, kettles etc. This category was found to be characterised by a number of suppliers who have a strong focus on coffee machines and associated products. Market inquiries revealed that coffee machines are one of the most technically complex products in the industry, and design is often focused on European styling. Unlike other categories, a significant proportion of the product sold (at least at the premium end) is made in Europe rather than China.

- **Cooking Equipment**: including portable products used in the kitchen for cooking (i.e. grillers, deep fryers, rice cookers, toasters etc). Sunbeam, Breville and Kambrook were found to have a strong presence across all products in cooking equipment. There was also found to be a number of competitors who have strengths in particular products (such as George Foreman in grills and Tefal in food steamers and deep fryers).

- **Food Preparation Equipment**: typically includes those products used to prepare raw ingredients prior to cooking (i.e. choppers, hand blenders, mixers etc). The Sunbeam and Breville brands were found to be strong in this category, with Kenwood matching the merger parties in terms of the range of products offered.

- **Household Appliances**: contains mainly seasonal products, such as electric blankets and heating, as well as irons. The ACCC decided to exclude vacuum cleaners from this category, as these products are dominated by suppliers who do not supply other small electrical appliance products and the merger parties do not overlap in the supply of vacuum cleaners.

- **Personal Care Products**: includes personal grooming products such as hairdryers, shavers and electric toothbrushes. There were found to be a number of suppliers who focus only on personal care products, such as Remington and VS Sassoon.

51. The ACCC notes that some retailers supply small electrical appliances under their own house brand (thus undertaking the roles of both wholesaler and retailer in the supply chain). Accordingly, retailers who supply house branded small electrical appliance products (or could do so) were taken into account in the ACCC's assessment of this matter.

**Competition analysis**

52. Concerns were raised in the course of market inquiries that the proposed acquisition would result in a substantial lessening of competition through the removal of a key competitive constraint on GUD, and accordingly increase the merged firm's unilateral market power in relation to a number of products and product categories. In particular, concerns were raised that the merged firm would profitably be able to raise prices, and otherwise exercise market power, in the following product categories:

- Beverage makers;
- Cooking equipment;
- Food preparation equipment; and
- Home appliances.

53. In determining whether the proposed acquisition would be likely to have the effect of substantially lessening competition in each relevant market, the ACCC took into account the factors outlined in section 50(3) of the Act.

*Market concentration*

54. The ACCC's Merger Guidelines note that in assessing concentration, the ACCC takes into account the pre- and post-merger market shares of the merged firm and its rivals and the actual increase in concentration (see paragraphs 7.9-7.16). Concentration metrics, such as the HHI, are used as a preliminary indicator of the likelihood that the merger will raise competition concerns.

55. The table below shows the HHI calculations in this matter. The ACCC will generally be less likely to identify horizontal competition concerns when the post-merger HHI is:

- less than 2,000; or
- greater than 2,000 with a delta (which is the change in the HHI that results from a merger) of less than 100.

Table 1: HHI thresholds in relation to the proposed acquisition

| Market | Post-merger HHI |
| --- | --- |
| Beverage Makers | 3229 |
| Cooking Equipment | 3988 |
| Food Preparation Equipment | 5109 |
| Home Appliances | 3707 |
| Personal Care | 1650 |

56. GUD and BRG are currently the two largest wholesale suppliers in each of the markets for beverage makers, cooking equipment, food preparation equipment and home appliances. GUD's share of sales in each of these markets would exceed 50% if the proposed acquisition proceeded and result in deltas in these markets of between approximately 1,550 and 2,680.

57. The level of market concentration would not increase significantly in the market for personal care products, primarily as a result of GUD's limited presence in that market. On this basis, the ACCC took the view that the proposed acquisition was unlikely to result in a substantial lessening of competition in this market, and accordingly, this product category is not examined further in the following analysis.

58. The merged firm's share of sales of small electrical appliances more broadly would have been around 50%, with an HHI of approximately 2,800 and a delta well in excess of 200. Further, in relation to many specific products including juicers, kettles, skillets/frypans, bread makers, woks, blenders and hand mixers, the merged firm's share of sales would have exceeded 80%.

59. These market shares are substantial. Not only would GUD account for a significant proportion of sales, post-acquisition, but the acquisition itself eliminates a substantial competitor. Changes in the market structure of this magnitude have the potential to increase the unilateral market power of the merged firm.

*Removal of competitive interaction between GUD and BRG*

60. Information obtained during the ACCC's review indicated that GUD and BRG exert significant competitive pressure on one another – that is they are close competitors. Their strong brand name reputations combined with the similarity of the range, features and pricing of the products they supply make GUD and BRG's appliances the first and second choice for a large number of consumers.

61. The competitive constraint GUD and BRG exert on one another is reflected by the:

- similar brand positioning based on brand equity built-up over a considerable period with Australian consumers.
- similar positioning of models within each product segment.
- significant on-going investment in product design and innovation – with GUD and BRG matching one another in terms of product design and features.
- frequent reaction and response to one another's promotional offers (i.e. cash back offers and competitions).
- vigorous competition for shelf and advertising/catalogue space with major retailers.

62. Market inquiries indicated that a substantial number of GUD customers regard BRG brands as the next closest substitute for GUD brands (and vice versa). The proposed acquisition would therefore remove BRG as the second choice for many of GUD's consumers. While not all customers make purchasing decisions based on brand, information obtained during the ACCC's review indicates that most consumers choose small electrical appliances from a range of brands that they know and trust.

63. The ACCC considered that the above reasons evidenced that not only are GUD and BRG close competitors, but that they are also vigorous and effective competitors. The proposed acquisition would therefore result in the removal of the close and vigorous competitive constraint which BRG currently imposes on GUD.

*Availability of substitutes*

64. The ACCC found that other wholesale suppliers were unlikely to provide an effective competitive constraint on the merged firm. Although there are other wholesale suppliers in each of the markets, relative to GUD and BRG many of these suppliers:

- have less well-established brand name reputations
- have brand name reputations specific to one or only a few appliances
- supply a smaller range of models for each appliance
- target different or more limited price points
- have less leverage in accessing shelf-space with major retailers.

65. The ACCC considered that, with their current offerings, the competitive constraint these suppliers would impose on the merged firm was unlikely to be effective. The major competitive constraint on GUD and BRG is the constraint they impose on each other.

66. Given this view the ACCC examined the:

- incentive and ability of other wholesale suppliers to expand their range or reposition their brand in order to more effectively compete with the merged firm
- likelihood and effectiveness of new entry, and
- countervailing power of retailers of small electrical appliances.

*Barriers to entry and expansion*

67. In its consideration of the matter, the ACCC considered whether there was a sufficient likelihood that timely entry or expansion into the relevant markets could act as a constraint against the merged firm exercising market power.

68. The ACCC considered that brand name reputation is the most significant barrier to both entry and expansion. ACCC inquiries indicated that brand is important to many consumers and that a significant proportion of consumers would only purchase small electrical appliances with brands that they are familiar with and trust. Further, market inquiries indicated that customers of GUD and BRG brands are more willing to tolerate an increase in price in GUD and BRG products relative to other small appliance products, due to their brand loyalty and as a result of perceived benefits GUD and BRG offer customers (such as quality and reliability).

69. The importance of brand also results in a limited incentive for retailers to switch away from traditionally strong selling brands. In particular, market inquiries indicated that shelf space in retail outlets is limited and that most retailers base their decisions about which products to stock on proven sales success.

70. The ACCC specifically considered the barriers faced by:

- existing wholesale suppliers expanding within product categories;
- existing wholesale suppliers entering new product categories;
- entirely new participants commencing supply within one or more product categories.

<u>Barriers to expansion</u>

71. The ACCC considered whether existing market participants could sufficiently expand (or credibly threaten to expand) their operations within the relevant product categories so as to act as a constraint on the merged firm. The ACCC took the view that in order for expansion to be an effective constraint, competing suppliers would need to substantially replace the competition lost through the merger.

72. The ACCC concluded that it was unlikely that existing wholesale suppliers would have the ability and incentive to expand their product offering or reposition existing products to provide an effective and timely competitive constraint on the merged firm. This view was based on the following:

- wholesale suppliers would be unlikely to effectively reposition their brands so as to replace the competition lost by the proposed acquisition, as this would require sustained investment in advertising and product development over time in order to establish recognition and credibility with customers.
- a number of wholesale suppliers have in the past faced significant difficulties in ‘transferring’ brand name reputation from one appliance to another (even within the same product category).
- other wholesale suppliers face significant difficulties in accessing shelf space at major retail outlets who have a strong preference to allocate shelf space to suppliers with a track record of strong sales.

73. In addition to the above, investment in design and innovation is also likely to be a barrier to expansion, especially at the mid to premium price points where GUD and BRG are particularly vigorous and effective competitors. Notwithstanding that wholesaler suppliers may fairly easily source product ‘off the shelf’ from Chinese manufactures, wholesale suppliers that are most successful, including the merger parties, invest heavily in innovation and product design to meet the needs of Australian consumers.

74. It is noted that the ACCC considered that the matters outlined above regarding barriers to expansion can be similarly applied to a broader market definition that includes all small electrical appliances. Although a broader market definition results in an increased number of market participants, it is unlikely that any of the existing participants could expand their range in a manner that would sufficiently replace the competition lost as a result of the proposed acquisition.

Barriers to entry

75. The ACCC formed the view that it was unlikely that the actual or potential threat of new entry into the relevant markets would be a sufficient constraint on the merged firm. Information provided to, and tested by, the ACCC during the course of its review indicated that brand acted as a significant barrier to entry, both for existing suppliers that want to expand into different product category markets and entirely new market participants.

76. Market inquires revealed that wholesale suppliers would have difficulty in credibly threatening to enter the relevant markets, even in circumstances where they were already supplying appliances in other product categories. This view was based on the following:

- it was found that existing wholesale suppliers could not readily transfer the goodwill established in their brand when attempting to expand into other product categories.
- existing wholesale suppliers seeking to enter different product category markets must make significant investment in promotion, advertising and product development over a sustained period in order to obtain recognition with customers.
- retailers are hesitant to allocate shelf space where sales success has not been demonstrated in a product category.
- there have been very few examples of existing wholesale suppliers transferring success in one product category to another in a timely manner.

77. The ACCC also concluded that new entry from firms not already offering small electrical appliance products was unlikely to be timely, likely or sufficient to provide an effective constraint on the merged entity post-merger. This conclusion was also reached in relation to the alternative market definitions considered by the ACCC.

78. The ACCC considered that brand was a significant barrier to entry, as entirely new market participants (i.e. with a wholly unknown brand) would need to make considerable investment and have sufficient lead time in order to establish goodwill with consumers.

79. Further, there are a number of sunk costs associated with new entrants establishing sufficient brand reputation, including investment in product development and advertising and promotion. New entrants must also invest in sourcing options, distribution arrangements, quality assurance and after sales support services.

80. The ACCC concluded that new entry, either by existing wholesale suppliers seeking to supply products in alternative product categories or completely new wholesale suppliers, is difficult and risky and would be unlikely to replace the competition lost as a result of the proposed acquisition. The ACCC concluded that brand was the most significant barrier to entry and that new entrants would need to make sizeable investments over a number of years in marketing, product and brand development in order to be an effective constraint on the merged firm.

*Countervailing power of retailers*

81. Retailers would have countervailing power if they could credibly threaten to bypass the merged firm. The ACCC considered whether retailers could credibly threaten to bypass the merged firm by:

- sponsoring new entry or the expansion of an existing brand; or
- introducing or expanding ‘house’ brands.

82. Although it is noted that retailers could assist in the sponsoring of entry or expansion by providing shelf space, substantial time and investment would still be required to promote the brand. The ACCC considers that the barriers to entry and expansion, discussed above, would also apply to attempts by a retailer to sponsor such entry or expansion.

83. Market inquiries undertaken by the ACCC did not reveal any examples where a retailer had successfully sponsored significant expansion of an existing brand. The ACCC concluded that retailers could not credibly threaten to replace the merged firm’s products with that of an alternative brand in the short to medium term because those alternative brands are not demanded by consumers to the same, or similar, degree.

84. The ACCC notes that a significant proportion of retailers, in particular discount department stores, already offer unbranded or house branded products to consumers. Market inquiries indicated that house brands are positioned differently in the market to the Sunbeam and Breville brands, catering predominantly to an entry price point, and in the main do not compete directly with the merger parties.

85. Market inquiries indicated that most retailers need to stock branded small electrical appliance products in order to attract customers and that house brands would be unlikely to impose an effective constraint on the merged firm. The ACCC's inquiries indicated that although retailers may credibly be able to provide house branded products they would not be able to credibly threaten to replace GUD and BRG branded products (or a sufficient proportion of those products) with house branded products.

86. As a result of the above, the ACCC concluded that the countervailing power of retailers would not be likely to provide an effective competitive constraint on the merged firm post-acquisition.

*Summary of competition analysis*

87. Based on information provided during the ACCC's review, the ACCC found that if the proposed acquisition were to proceed:

- there would be a significant increase in market concentration, irrespective of whether the relevant markets were defined on the basis of specific products, product categories, or small electrical appliances more broadly.
- the merged firm could profitably and substantially increase prices of certain small electrical appliance products within four product category markets due to the removal of competition between GUD and BRG, who are presently each other's closest competitors.
- the merged firm could reposition the BRG or GUD brands so as to avoid direct competition between them. This could be effected by repositioning the brands at different price points (either across the board, or product by product, or category by category) or reducing the range of products offered.
- the merged firm could reduce the quality of its products or reduce investment in product design and innovation. The ACCC considered that design and innovation in small electrical appliances in Australia is presently largely driven by competition between GUD and BRG.
- the merged firm could extract trading terms which are less favourable to retailers and/or may offer less generous warranty terms to consumers as a result of its increased market power. This would in turn result in consumers being worse off than at present (for example, through an increase in the retail prices offered to consumers).
- it is unlikely that other wholesale suppliers would reposition brands or expand their range of products to effectively constrain the merged firm from engaging in such conduct.
- new entry is also unlikely to provide an effective constraint.
- retailers could not credibly threaten to bypass the merged firm for similar reasons to those which prevent other suppliers providing an effective competitive constraint against the merged firm.

88. These issues would arise whether the market was defined in terms of specific products, product categories, or small electrical appliances more generally.

**Conclusion**

89. The ACCC formed the view that the most appropriate markets in which to consider the competitive effects of the proposed acquisition were national markets for the wholesale supply of small electrical appliances grouped according to use and function, being the following product categories:

- Beverage makers (e.g. coffee makers, kettles, juicers);
- Cooking equipment (e.g. toasters, electric fry pans, sandwich makers);
- Food preparation equipment (e.g. blenders, mixers, food processors);
- Home appliances (e.g. irons, heaters); and
- Personal care products (e.g. shavers, hair dryers, electric toothbrushes).

90. The ACCC considered that the proposed acquisition of Breville Group Limited by GUD Holdings Limited would be likely to result in a substantial lessening of competition in national markets for the wholesale supply of the first four of those product categories. The ACCC also considered that the proposed acquisition of BRG by GUD would be likely to result in a substantial lessening of competition even if the market was defined in terms of specific products or small electrical appliances more generally.

91. The ACCC therefore concluded that the proposed acquisition would contravene section 50 of the Act.