



**Australian  
Competition &  
Consumer  
Commission**

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Our ref: 49980  
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29 October 2012

Dear interested party

### **Heinz – proposed acquisition of Rafferty’s Garden**

The Australian Competition and Consumer Commission (**ACCC**) is reviewing the proposed acquisition of Rafferty’s Garden Pty Ltd (**Rafferty’s Garden**), a supplier of infant food products, by H.J. Heinz Company Australia Limited (**Heinz**) (the **proposed acquisition**).

The ACCC is considering the proposed acquisition under section 50 of the *Competition and Consumer Act 2010* (the **Act**). This section prohibits acquisitions that have the effect of substantially lessening competition in a market, or are likely to do so.

The ACCC is seeking comments from market participants and interested parties to enable it to assess the likely competitive effects of the proposed acquisition. Details about the parties, the areas of competitive overlap and relevant industry background are set out in **Attachment A**. Specific issues and questions that you may like to address are set out in **Attachment B**.

In order to allow consideration of your response, please provide submissions by no later than **Monday 16 November 2012**. Submissions should be sent electronically (preferably in PDF format) to [mergers@accc.gov.au](mailto:mergers@accc.gov.au) with the title: “Submission re: Heinz’s proposed acquisition of Rafferty’s Garden (attention Jian Liu)”.

Please contact us if you require an extension of time. You are also welcome to discuss the proposed acquisition by telephone by contacting Daniel McCracken-Hewson on (03) 9290 1482 or Jian Liu on (03) 9290 1489.

If the information provided is of a confidential nature, you can be assured that the details provided by you will be treated confidentially. That is, the ACCC will not disclose the confidential information to the merger parties or third parties, other than advisors or consultants engaged directly by the ACCC, without first providing you with notice of its intention to do so, such as where it is compelled to do so by law. Please note that any information which you believe to be of a confidential nature should be clearly marked or identified as confidential.

Updates regarding the ACCC's assessment of this matter will be available on the ACCC's public Mergers Register (accessible at: [www.accc.gov.au/mergersregister](http://www.accc.gov.au/mergersregister)).

Yours faithfully

A handwritten signature in black ink, appearing to be 'Rami Greiss', written in a cursive style.

Rami Greiss  
General Manager  
Merger Investigations Branch

**Industry background***Infant food*

Packaged infant food is used in addition to, or as a partial or complete substitute for, breast milk, infant formula, home-cooked meals and snacks for infants aged from approximately four months.

Infant foods are generally categorised into 'wet' and 'dry' food according to the consistency of the product.

- Wet infant food includes products such as purees, custards, gels and jellies. It is supplied in a variety of packaging types: cans, glass jars, pouch and 'pouch-and-spout'. Pouch-and-spout packaging is an increasingly popular form of packaging for infant food which has experienced considerable growth in recent years.
- Dry infant food includes a range of products, which can be broadly categorised as cereals (such as muesli and porridge) and snacks (such as rusks, fruit bars and rice cakes).

*Suppliers and customers*

Wholesale suppliers either manufacture and pack infant food themselves or engage third party co-packers.

The shelf life of wet and dry infant food products is relatively long (12 to 24 months depending on the type of packaging), enabling them to be imported from overseas.

Supermarkets, predominantly Coles and Woolworths, account for the vast majority of retail sales of infant food, with some additional sales in pharmacies and petrol and convenience stores. In addition, Coles and Woolworths have both introduced private label infant food products in pouch-and-spout packaging.

**The parties***Heinz*

Heinz manufactures a range of food and beverages and has manufacturing operations at various locations around Australia. Heinz is the only manufacturer of canned wet infant food in Australia, and the leading manufacturer of glass jar-packaged infant food. It also has a range of wet infant foods available in pouch-and-spout packaging sold under the 'Heinz Simply' and 'Heinz Organic' brands.

*Rafferty's Garden*

Rafferty's Garden specialises in the wholesale supply of infant food and commenced business in FY2008. It is currently a leading supplier of both wet and dry infant food, particularly in pouch-and-spout packaging. Rafferty's Garden's entire wet infant food product range is contained in pouch-and-spout and pouch packaging. None of its products are packaged in cans or glass jars.

*Areas of overlap*

Heinz and Rafferty's Garden both supply:

- wet infant food packaged in pouch-and-spout packaging; and

- dry infant food.

**Your business**

1. Please describe your business or organisation and any relationship you have with Heinz and/or Rafferty's Garden (e.g. competitor, supplier, customer, industry body or interested third party).

**Relevant markets**

2. The ACCC will consider the impact of the proposed acquisition on competition in any relevant markets. The ACCC therefore invites your views on the product and geographic dimensions of the market or markets in which Heinz and Rafferty's Garden compete.

Matters that you may wish to comment on include the following:

- a. The level of substitutability between:
  - i. dry infant food and wet infant food;
  - ii. (within the dry infant food category) cereals and snacks;
  - iii. (within the wet infant food category) different packaging types (such as cans, glass jars and pouch-and-spout packaging).

From a demand-side perspective, this depends on the willingness of retailers (such as the major supermarkets and other retailers of infant food products) and/or end consumers (purchasers of infant food) to switch to an alternative product category or alternative packaging type in response to a small but significant increase in the price of one product category or packaging type (e.g. switch from cans and glass jars to pouch-and-spout packaging and/or switch from cereals to snacks).

From a supply-side perspective, this depends on suppliers' ability to switch their production promptly in response to a small but significant increase in the price of the alternative product category or packaging type, taking into account production costs, supply chain, route to market, branding and marketing requirements.

- b. The geographic area over which suppliers in these markets distribute their goods.

**Competition in the markets**

3. How closely do Heinz and Rafferty's Garden currently compete in relation to the supply of infant food in Australia (or in a particular region of Australia)?

In responding, please comment on:

- a. the extent of competition between the parties on the basis of price, product innovation, product quality and range, branding and marketing, packaging and any other relevant factors;
- b. the extent to which Rafferty's Garden is a vigorous and effective competitor for the wholesale supply of infant food (or particular categories of infant food or packaging types), including the extent to which it is known as a leader in price competition or product innovation (please provide any recent examples);

- c. the role of other competitors in the market, including imports; and
- d. the competitive dynamics in the different distribution channels, including the significance of private label products and home-made food, and products purchased for feeding older infants which are not specifically designed for infants.

**Barriers to entry and expansion**

4. The ACCC will consider the barriers to entry and/or expansion in the relevant markets, particularly the extent to which such new entry or expansion (whether actual or potential) would prevent suppliers from increasing prices. The ACCC therefore invites your views on the extent to which new entry or expansion in the wholesale supply of infant food (or particular categories of infant food or packaging types) would be sufficiently likely and timely following a price rise, and of a sufficient scale, to deter price rises.

Matters that you may wish to comment on include:

- a. any examples of successful or failed attempts at entry or expansion, including entry to or exit from particular categories of infant food or packaging types;
- b. the likelihood of new entry and/or expansion in the wholesale supply of infant food;
- c. the importance of existing brand loyalty and recognition and the ease or difficulty of establishing an attractive brand;
- d. the extent of sunk costs or capital requirements;
- e. the ability to expand existing manufacturing capacity in a timely manner and/or engage third party co-packer manufacturing capability;
- f. the existence of any regulatory or legal barriers;
- g. the importance of scale and scope;
- h. any impediments to retailers or end consumers switching between suppliers or between categories of infant food or packaging types; and
- i. the significance of existing relationships or agreements between suppliers and retailers.

**Buyer power**

5. In the event that a merged Heinz/Rafferty's Garden, post-acquisition attempted to increase prices, to what extent could retailers (such as major supermarkets and other retailers of infant food products) exercise buyer power to prevent such an increase? In particular:
- a. Could retailers bypass Heinz or Rafferty's Garden's products, for example by establishing or expanding their own private label offerings, sponsoring expansion of existing or new manufacturers and wholesale suppliers of infant food (including imports)? Are these options more feasible for some retailers than others?

- b. Could retailers shift sales to competing brands? For example, could they rely on alternative infant food products which are close substitutes for the products of Heinz or Rafferty's Garden?

**Likely effect of the proposed acquisition**

- 6. What do you consider to be the likely effect of the proposed acquisition? In particular:
  - a. Do you consider that the proposed acquisition is likely to provide Heinz with the ability or incentive, post-acquisition, to increase prices? Please provide supporting reasons.
  - b. What impact, if any, is the proposed acquisition likely to have upon product innovation in the wholesale supply of infant food? If the proposed acquisition does not proceed, how likely is Heinz to increase product innovation in order to expand into particular product categories or packaging types?
  - c. What impact, if any, is the proposed acquisition likely to have upon the ability and/or incentives for new entry? Do you consider that new entrants are likely to be encouraged to enter or deterred as a result of the proposed acquisition?

**Other information**

- 7. Please provide any other information that you consider may be useful to the ACCC's assessment of the proposed acquisition.