



## Public Competition Assessment

23 July 2020

### B&J City Kitchen Pty Ltd proposed acquisition of Jewel Fine Foods business

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#### The ACCC's decision

1. On 5 September 2019 the ACCC announced its decision to oppose the proposed acquisition by B&J City Kitchen Pty Ltd (**B&JCK**) of the business and assets of nine Jewel Fine Foods entities (**Jewel**) (the **proposed acquisition**).
2. The ACCC considered that the proposed acquisition would be likely to contravene section 50 of the *Competition and Consumer Act 2010* (the **Act**).
3. Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
4. The ACCC considered the effects of the proposed acquisition on competition in Australia for:
  - the wholesale supply of chilled ready meals; and
  - the retail supply of chilled ready meals.
5. The ACCC considered that the proposed acquisition would combine the two largest suppliers with demonstrated experience and track records in manufacturing a broad range of chilled ready meals. A combined B&JCK/Jewel would also hold a high proportion of the existing manufacturing capacity for chilled ready meals. While there may have been scope for alternate suppliers to expand and develop their experience and track records, their ability to do so in the short to medium term was uncertain.
6. This Public Competition Assessment outlines the reasons for the decision by the ACCC to oppose the proposed acquisition.
7. Please note that this and other public competition assessments are subject to the following qualifications:

- The ACCC considers each transaction on a case-by-case basis and so the analysis and decision outlined in one assessment will not necessarily reflect the ACCC's view of another transaction, even where that other transaction may involve the same or a related market.
- As assessments are brief and do not refer to confidential information provided by the parties or other market participants, assessments do not necessarily set out all of the issues and information considered by the ACCC, nor all of the analysis and reasons of the ACCC.

## **The parties and transaction**

### **The acquirer: B&JCK**

8. B&JCK manufactures private label and branded chilled fresh, chilled post-pack pasteurised, and frozen ready meals, from its facility in Arndell Park, in Western Sydney.
9. B&JCK is 77 per cent owned by Beak and Johnston Holdings Pty Ltd and 23 per cent owned by Woolworths Group Ltd. B&JCK supplies nationally to grocery retailers and wholesalers including Coles, Harris Farm, Metcash and Woolworths.

### **The target: Jewel**

10. Jewel manufactured private label and branded chilled, frozen, and ambient ready meals, as well as soups, breads and fried snacks, from its facility in Banksmeadow in New South Wales.
11. At the time the ACCC conducted its review, Jewel supplied nationally to grocery retailers and wholesalers including Aldi, Coles, Costco, Metcash and Woolworths. Jewel entered administration on 26 April 2019 and the parties entered into the proposed acquisition on 24 July 2019.
12. The proposed acquisition involved the following Jewel Fine Foods entities:
  - Jewel of India Holdings Pty Ltd (Administrators Appointed)
  - Jewel of India Enterprises Pty Limited (Administrators Appointed)
  - Jewel International Foods Pty Ltd (Administrators Appointed) as trustee for Jewel International Foods Unit Trust
  - Jewel Fine Foods Pty Ltd (Administrators Appointed)
  - Jewel of India Admin Pty Ltd (Administrators Appointed)
  - Jewel Equipment Pty Ltd (Administrators Appointed)
  - Jewel Properties (Aust) Pty Ltd (Administrators Appointed) as trustee for Matta Family Trust

- Jewel of India Retail Pty Ltd (Administrators Appointed)
- Gardeners Nominees Pty Ltd (Administrators Appointed).

## The transaction

13. B&JCK proposed to acquire the business and assets from the nine Jewel entities. The proposed acquisition arose as the result of a sales process undertaken by the administrators of Jewel.

## Review timeline

14. The following table outlines the timeline of key events for the ACCC in this matter.

| Date             | Event  |
|------------------|--|
| 29 July 2019     | ACCC commenced informal review under the Informal Merger Review Process Guidelines.  |
| 5 August 2019    | Closing date for submissions.  |
| 29 August 2019   | Former provisional date for announcement of ACCC's findings (19 September 2019) brought forward due to the operational circumstances of Jewel. |
| 5 September 2019 | ACCC announced that it opposed the proposed acquisition.   |

15. The total elapsed time taken to complete the review from start to finish was approximately six weeks.
16. Typically, if the ACCC has concerns regarding a proposed acquisition, it issues a Statement of Issues. In this instance, the ACCC expedited the review due to the circumstances surrounding Jewel and the administration, and accordingly did not issue a Statement of Issues. The parties were advised that there would be no Statement of Issues step for this matter.

## Market inquiries

17. The ACCC conducted market inquiries with a range of industry participants, including current and potential competitors, customers, and other interested parties. The ACCC also reviewed confidential material provided by the parties and other market participants, including B&JCK's internal documents discussing the proposed acquisition.

## Industry background

18. Ready meals are complete meals, which require little preparation by consumers before consumption. Although there are various types of ready meals available, each generally falls within one of three broad categories: chilled, frozen or ambient.

19. Chilled ready meals are cooked, packaged and chilled to refrigeration temperature. They require less heating time than a frozen ready meal and are generally viewed by consumers as fresher and having higher quality. Fresh chilled ready meals typically have a shelf life of between 16 and 40 days.
20. Frozen ready meals are similar to chilled ready meals, but they require a freezing step at the completion of cooking and packing. Frozen ready meals typically have a lower price point than chilled ready meals. Frozen ready meals generally have a shelf life of up to 6 months.
21. Ambient ready meals are meals that are cooked, preserved and packaged to be stored without the need for refrigeration. Examples of ambient ready meals are some soups and pastas.
22. In this matter, the ACCC's concerns related to chilled ready meals. However, as discussed below, the ACCC closely examined whether chilled ready meals are substitutable with other types of ready meals and convenience foods.

### Other industry participants

23. The ACCC found that Jewel and B&JCK were the two largest manufacturers of chilled ready meals. Outside of Jewel and B&JCK, the ACCC found that there were alternative suppliers with a smaller presence, including Andrews' Meats, Kitchen Food Company, and Australian Wholefoods. Each of these alternative suppliers produced a range of chilled ready meals, some of which were supplied to the major grocery retailers. However, none of these alternative suppliers produced chilled ready meals at the same scale of Jewel or B&JCK.

### Future with and without the acquisition

24. Section 50 of the Act 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, the ACCC considers the effects of the acquisition by comparing the likely future state of competition if the acquisition proceeds (the "with" position) to the likely future state of competition 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.
25. The ACCC's *Merger Guidelines 2008* (updated 2017) outline the ACCC's approach to "failing firms." As explained in the Guidelines, the state of competition prevailing at the time of a merger will overstate the future state of competition without the merger in situations where one of the merger parties is likely to exit the market. In such situations, the merger party that is likely to exit is referred to as a 'failing firm'. Mere speculation that a firm will exit in the near future or evidence of a recent decline in profitability is insufficient to establish that an absence of competition between the merger parties will arise without the merger.
26. In general, to demonstrate that a merger will not substantially lessen competition due to the prospective failure of one of the merger parties, it is necessary to show that:

- the relevant firm is in imminent danger of failure and is unlikely to be successfully restructured without the merger;
  - in the absence of the merger, the assets associated with the relevant firm, including its brands, will leave the industry;
  - the likely state of competition with the merger would not be substantially less than the likely state of competition after the target has exited and the target's customers have moved their business to alternative sources of supply
27. Jewel was in administration at the time of the ACCC's decision and was clearly facing significant financial difficulties. However, based on the information available to the ACCC at the time of its decision, the ACCC found that if the proposed acquisition did not proceed, Jewel would likely be sold to an alternative acquirer and continue to compete closely with B&JCK. Therefore the ACCC concluded that "failing firm" arguments did not apply to this transaction.

## Market definition

28. The ACCC's starting point for defining relevant markets to assess the competitive effects of the proposed acquisition involves identifying the products actually or potentially supplied by the parties to the acquisition. The ACCC then considers what other products constitute sufficiently close substitutes to provide a significant source of competitive constraint.
29. The ACCC considered effects of the proposed acquisition on competition in Australia for:
- the wholesale supply of chilled ready meals; and
  - the retail supply of chilled ready meals.

### Wholesale supply of chilled ready meals

30. At the wholesale level, the ACCC considered the substitutability of various alternative products available to B&JCK / Jewel's customers. In particular, the ACCC considered the substitutability of chilled ready meals, ambient ready meals and meal kits.
31. Given that the most significant wholesale purchasers of chilled ready meals are the major supermarket chains, the ACCC considered their likely behaviour in response to a small increase in price. We concluded that supermarkets are unlikely to substitute stocking of chilled ready meals for alternative types of convenience meals and products in response to a small price rise.
32. The ACCC found that supermarkets typically stock a wide range of ready meals to meet consumer demand, and that chilled meals are one part of this offer. Decisions about stock are primarily driven by consumer behaviour at the retail level, where we found there is often strong demand for particular convenience meal types, depending on the particular circumstances influencing the consumer making the purchase. These preferences are discussed in more detail below. As a consequence, major supermarkets see the provision of chilled ready meals as

a critical part of their offer, and other ready meals are not a substitute from their perspective. This is reflected in the structure of their buying and management teams and also in their provision of additional prominent shelf space to chilled ready meals in store redevelopments or new stores.

33. On the supply-side, the ACCC considered the ability of suppliers of alternative convenience meals to switch production and begin to supply chilled ready meals. We found that the production of chilled ready meals requires particular manufacturing equipment and levels of sanitation.
34. Alternative suppliers with the most similar manufacturing facilities and production processes were those who produced frozen ready meals. Despite these similarities, we concluded that the majority of frozen ready meal manufacturers would be unlikely to enter the production of chilled ready meals in response to a small change in the wholesale price of chilled ready meals.
35. We found that not all frozen ready meal suppliers have the correct equipment and experience to produce chilled ready meals. For those that did, we found that the production of chilled ready meals is more complex than that of frozen ready meals. This additional complexity is predominantly driven by the shorter shelf life of chilled ready meals, which in turn requires more frequent and shorter production runs. Information provided by market participants indicated that many ready meal manufacturers (whether chilled or frozen) had optimised their facilities for the production of either frozen ready meals or chilled ready meals. To disrupt this production by trying to produce both, or to switch between the two, would be a significant departure from their business model and carry additional costs.
36. Therefore, the ACCC concluded that there is likely to be a market for the supply of chilled ready meals at the wholesale level.

### Retail supply of chilled ready meals

37. The consideration of the behaviour of end consumers was an important part of our competition analysis.
38. In determining whether there was a market for the retail supply of chilled ready meals the ACCC considered whether a range of alternative convenience meals including frozen ready meals, delivered ready meals, takeaway and delivered takeaway meals and meal kits would be seen by consumers as an effective substitute for chilled ready meals.
39. The ACCC found that consumer preferences differ. Some consumers may readily substitute between chilled ready meals and other convenience options. However, we found that for many consumers other convenience meal options are unlikely to be seen as a close substitute for chilled ready meals. For many consumers chilled ready meals provide cost-effective quality meals involving minimal preparation time and effort. Other convenience options do not offer these attributes, or do not offer these attributes to the same degree as chilled ready meals.
40. In the case of frozen ready meals, the evidence provided to the ACCC showed that consumers that buy chilled ready meals do not tend to buy frozen ready meals and vice-versa. Consumers see chilled ready meals as fresher and having

higher quality than frozen ready meals. As a result, chilled ready meals generally have higher price points. Consumers also tend to purchase frozen ready meals and chilled ready meals for different purposes. Chilled ready meals are often consumed within a matter of days, whereas frozen ready meals are often purchased in bulk for longer term storage. These factors indicate that generally consumers will not switch to a frozen ready meal in response to a small increase in the price of the chilled ready meals.

41. Delivered ready meals, including some of the products sold by YouFoodz and Lite n Easy (noting that these brands can also be purchased in retail stores), can be either chilled or frozen. In the case of delivered ready meals, we considered that, although the physical product may be similar to those sold through retail outlets, the process to acquire the product was differentiated. Delivered ready meals require the consumer to order at least 24-48 hours in advance of consumption and in some cases carry a minimum order or subscription requirement. This additional step means that these products are unlikely to be an alternative for consumers wishing to make an immediate purchase through a supermarket or convenience store.
42. In the case of takeaway and delivered takeaway meals, such as those delivered by companies like UberEats, the ACCC found that their prices are generally considerably higher than chilled ready meals. Consumers seeking a cost-effective ready-made meal are unlikely to switch to these products in response to small increases in the price of chilled ready meals.
43. The ACCC also considered meal kits, which comprise a recipe and the ingredients required for the recipe. They are sold both through retail stores and delivery services. These products require significantly more preparation and cooking than chilled ready meals, which tends to reduce the convenience that some consumers are seeking when they purchase ready meals. Some meal kits require subscription and, as with the delivered ready meals services listed above, customers need to plan ahead of time. In contrast, in the case of chilled ready meals, consumers can collect them from a retailer as a last minute decision. We considered that consumers are unlikely to switch to these products in the event of a small increase in the price of chilled ready meals.
44. Based on the above analysis, the ACCC concluded that other convenience meals are not close substitutes for chilled ready meals at the retail level.

## **Competition analysis**

45. In Australia, B&JCK and Jewel were the two largest producers of chilled ready meals that could meet the scale, range, quality, reliability and price requirements of the major retailers. Other manufacturers, whilst they may have the manufacturing capability, did not have a proven track record of supplying the volumes and range of chilled meals supplied by B&JCK and Jewel. Accordingly, evidence from market participants indicated that there were very few alternatives to B&JCK and Jewel at the wholesale level, particularly in the short term. The ACCC considered that Jewel and B&JCK were each other's closest competitors, with the level of constraint imposed by alternative suppliers being relatively low.
46. Some alternative suppliers may have had the facility capacity to expand their production to meet the volume requirements of the customers that acquired chilled ready meals from Jewel or B&JCK. However, aside from manufacturing

capacity, the ACCC found that a number of other factors were also important for chilled ready meal producers to be competitive on a large scale. These included expertise in quality control and supply chain management, and the ability to produce a range of chilled ready meal types. Information provided to the ACCC indicated that fulfilling these requirements is difficult and would likely take a considerable period of time, especially at a large scale.

47. Given that the main purchasers of chilled ready meals at the wholesale level are major retailers, the ACCC also considered the degree to which they would possess buyer power or countervailing power to constrain any attempted price increase by a combined B&JCK / Jewel.
48. Both B&JCK and Jewel have benefited from investment and ongoing relationships with major retailers. The ACCC found that the major retailers possess a level of buyer power in this market which may allow them to negotiate favourable terms and prices relative to other purchasers in the market.
49. A potential response by a major supermarket chain to a price increase would be investment in an existing smaller alternative supplier, either through financial backing or a long term contract to underwrite expansion. Whilst the ACCC found that there may be some scope for such investment to happen in the future, an alternative suppliers' ability to reach a level where they would be a strong constraint on a combined B&JCK / Jewel was uncertain in the short to medium term. The ACCC found that such development was likely to take a significant period of time and sunk investment, for both the alternative supplier and the major customer sponsoring this development. In essence, any push to do this would not be costless, and would most likely not constrain the combined B&JCK/Jewel from implementing a price increase, especially in the short to medium term.

#### Impact on consumers

50. Given the competition impact at the wholesale level, and the lack of substitutes for consumers, the ACCC considered the acquisition would likely lead to consumers paying more for chilled ready meals.

#### Woolworths' interest in B&JCK

51. In addition to concerns regarding the horizontal aggregation in the supply of chilled ready meals, the ACCC also considered concerns regarding Woolworths Group Ltd's (**Woolworths**) shareholding in B&JCK.
52. Concerns were raised during market inquiries that Woolworths' interest in B&JCK may result in a combined B&JCK / Jewel either restricting supply of products to competing retailers, or allowing Woolworths access to sensitive commercial information from other retailers. It was submitted that such information could include details of product margins, sales volumes and recipes.
53. Ultimately, the ACCC did not need to reach a concluded view on the likelihood of competitive harm stemming from this further vertical integration of Woolworths, as it determined that the proposed acquisition was likely to substantially lessen competition based on the level of horizontal aggregation between B&JCK and Jewel.



## **Conclusion**

54. Based on the above analysis, the ACCC concluded that the proposed acquisition was likely to have the effect of substantially lessening competition in the supply of chilled ready meals.