



27 July 2006

## Statement of Issues: Britax Childcare Pty Ltd - proposed acquisition of BabyLove Products Pty Ltd

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition of BabyLove Products Pty Ltd (**BabyLove**) by Britax Childcare Pty Ltd (**Britax**).
2. A Statement of Issues published by the ACCC is not a final decision regarding a proposed acquisition, but provides preliminary views, and draws attention to particular issues of varying degrees of competition concern to the ACCC, as well as on the lines of enquiry that the ACCC wishes to undertake.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website: [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 10 August 2006 and anticipates making a final decision on 31 August 2006. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. To be kept abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the ACCC's website which contains the Mergers Register. To find the Mergers Register follow the link to "Public Registers" and then the link to "Mergers Register".
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 intended to also provide both the merger parties and other interested parties with the basis for making further submissions should they consider it necessary

### Background

5. On 26 April 2006, Britax advised the ACCC of the proposed acquisition of BabyLove and sought informal clearance from the ACCC under the ACCC's Merger Review Process Guidelines. The guidelines are available on the ACCC's website: [www.accc.gov.au](http://www.accc.gov.au).

### The parties

6. In Australia, Britax manufactures child car restraints at its production facility in Victoria and distributes these throughout Australia through a range of non-aligned retailers. In addition, Britax imports and distributes infant wheeled goods (strollers and prams) onto the Australian market. Approximately 80 per cent of the Britax business is child car restraints and the remainder nursery products (including infant wheeled goods).

7. BabyLove specialises in the manufacture and distribution of child car restraints. It also imports and distributes a number of nursery products, including infant wheeled goods. Approximately 40 per cent of the BabyLove business is child car restraints and the remainder nursery products (including infant wheeled goods).

### **Market background**

8. There are currently four suppliers of child car restraints: Britax, BabyLove, IGC and Infa products. Britax is the largest manufacturer with over half of national production. IGC and BabyLove are the second and third largest manufacturers respectively. Restraints are sold via retailers. The major department stores account for the majority of sales, with the remainder of sales split between major independent chains and smaller independent retailers. Britax and BabyLove have a greater presence in the independent retailers, while IGC has a greater presence in the major department stores.
9. While there are five main types of child car restraints, two types, type AB and type E, account for the vast majority of sales. The type AB restraint is a convertible child restraint - suitable for ages up to four years old, which can operate as a capsule or a forward facing restraint for older children. The type E restraint is a booster seat - suitable for those aged three to seven years old.
10. All child car restraints sold in Australia must comply with regulatory (product safety) standards. Since Australian product safety standards are set significantly higher than comparable countries, this increases the cost of imports (through modification, testing and certification costs).

### **Market inquiries**

11. The ACCC has conducted market inquiries with a range of interested parties, including retailers and competitors to the merger parties as well as relevant industry associations. The ACCC notes that a number of market participants expressed significant concerns about the proposed acquisition in relation to child car restraints.

### **Statement of Issues**

12. For the purpose of this Statement of Issues, the issues in this matter are divided into two categories: 'Issues of concern' and 'Issues unlikely to pose concerns'.

#### ***Issues of concern***

13. The ACCC has formed a preliminary view that the acquisition is likely to lead to a substantial lessening of competition in the markets for the manufacture and supply of child car restraints in Australia. This is due to a lack of competitive constraints on the merged entity in setting prices and quality of child car restraints. This preliminary view has been formed on the basis of the following issues.
14. The acquisition will significantly increase concentration in the manufacture and supply of child car restraints in Australia. The merged entity and its nearest competitor, IGC, would have almost 100 per cent of the market share in Australian states and territories. The merged entity would be a particularly strong supplier to the independent retailer sector of the markets.

15. In addition, imports of child car restraints appear unlikely to constrain the merged entity. While there are some examples of the use of imports of child car restraints in the Australian markets, the costs of modification, testing and certification required for importing child car restraints (to meet product safety standards) appear substantial. This raises the cost of entry into the markets via imports, and may limit the potential for import competition in Australia.
16. Barriers to entry (or expansion) appear to be high. Entrants face substantial sunk costs. Strong brand loyalty, reputation, and the limited market size and capacity for growth may also act as disincentives to entry. The costs of modification, testing and certification for imported child car restraints are also relevant here, as they increase the costs of entry via imports. A number of market participants have also indicated that for entry to be profitable and sustainable, a sizeable market share (in the order of 10-15 per cent) is required. When combined with factors such as substantial sunk costs and strong brand loyalty, this may act to deter potential new entrants.
17. Countervailing power for both retailers and consumers of child car restraints appears limited. Many retail chains are relatively large in size. However, given the market share of the merged entity, the small number of major competitors, costs associated with imports, Britax' strong brand recognition, and in particular its strength in sales to independent retailers, the countervailing power for both retailers and consumers appears limited. Retailers are unlikely to be in a position to establish their own 'in-house' manufacturing operations. Small independent retailers would be most significantly affected, as child car restraints are likely to be a necessary stock item.
18. More generally, competitive constraints appear to be weakest at the premium end of the markets for the manufacture and supply of child car restraints in Australia (primarily sales via independent retailers). The market share of the merged entity would be particularly high for sales at the premium end of the markets. Countervailing power is also likely to be more limited, with indications that there is strong brand loyalty, and that product demand is relatively unresponsive to changes in price in this market segment.
19. The ACCC would welcome further information about all of these issues, and the extent to which there will be competitive constraints, if the merged entity attempted to increase prices of child car restraints by 5-10 per cent.

***Issues unlikely to pose concerns***

20. At this stage, the ACCC considers that the proposed acquisition is unlikely to pose substantial competition concerns for the market for infant wheeled goods. Suppliers are not heavily concentrated and there is a very high level of import penetration. However, the ACCC will accept further submissions from industry participants and will further explore these issues if it considers that such assessment is warranted.

## ACCC's Future Steps

21. The ACCC will finalise its decision on this matter subsequent to considering the further market responses invited by this Statement of Issues.
22. The ACCC now seeks submissions from market participants on each of the issues that have been raised in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter.
23. At this stage, the ACCC anticipates completing its further market inquiries by 10 August 2006. Submissions are to be received by the ACCC by that date. The ACCC will consider the submissions received from market participants, including submissions from the parties to the proposed acquisition, in light of the concerns that have been identified and (in conjunction with information and submissions provided by all parties) make a final decision as to the appropriate course of action to resolve any competition concerns that remain outstanding.
24. The ACCC anticipates making a final decision on 31 August 2006. However, the anticipated timeline may change in line with the *Merger Review Process Guidelines*. To be kept abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the ACCC's website which contains the Mergers Register. To find the Mergers Register follow the link to "Public Registers" and then the link to "Mergers Register".