



**Australian
Competition &
Consumer
Commission**

15 February 2007

Statement of Issues — George Weston Foods Limited’s proposed acquisition of Rabkal Pty Ltd t/as Good Stuff Bakery

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (**ACCC**) in relation to the proposed acquisition of Rabkal Pty Ltd trading as the Good Stuff Bakery (**GSB**) by George Weston Foods Limited (**GWF**) (**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) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 1 March 2007 and anticipates making a final decision on 15 March 2007. 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.
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 20 November 2006, GWF publicly announced the proposed acquisition.

The parties

George Weston Foods Limited

6. GWF manufactures and distributes nationally a range of consumer food products and ingredients.
7. GWF's baking business manufactures and distributes various bread products and other baked goods (including 'Tip Top' branded bread products, bread rolls and buns, crumpets, crispbreads, muffins, bagels, packaged cakes and specialty breads, breadcrumbs and stuffing mixes), 'Tip Top' branded packaged flour and 'Kitchen Collection' bread mixes. These products are supplied to retailers and the food service industry. GWF also manufactures a quantity of generic-label bread products for supermarkets.
8. GWF also manufactures packaged cakes in Brisbane under the 'Top Taste' brand. These cakes are distributed Australia-wide.
9. Another of GWF's businesses, Weston Cereal Industries, trading as Weston Milling, supplies a range of baking ingredients such as flour, bread and cake pre-mixes, filling mixes and non-flour bakery ingredients to the food services, industrial and commercial sectors.

Rabkal Pty Ltd trading as the Good Stuff Bakery

10. GSB is a family-owned business that was established on the Gold Coast in 1988. GSB manufactures and distributes assorted bread products, including sandwich and Turkish breads, rye loaves, rolls and lamingtons.
11. GSB markets its bread products under its own 'Good Stuff' brand. However, it also manufactures a quantity of generic-label bread products for supermarkets.

Other industry participants

12. Goodman Fielder manufactures and distributes nationally a range of consumer food products and ingredients. Its bread division, Baking Australia, manufactures and distributes a wide range of bread products under brand names such as 'Buttercup', 'Helga's', 'Sunicrust' and 'Wonder White'.
13. In southern Queensland Goodman Fielder manufactures bread products at a facility in the Brisbane area (Carina) and a facility at Burleigh Heads (on the Gold Coast). It also has bakeries at Rockhampton, Townsville and Cairns.
14. Gold Coast Bakeries is a plant baking business at Ernest Junction on the Gold Coast. It manufactures and distributes bread under brands such as 'Gold Coast' and 'Golden Hearth'. These brands are distributed widely in southern Queensland and northern New South Wales (from Ballina to Bribie Island and as far inland as Moree).
15. Homestyle Bakeries is based in Toowoomba. It is predominantly a cake manufacturer which also manufactures and distributes bread. Homestyle

Bakeries services an area reaching Maryborough in the north, Tenterfield in the south and as far inland as Quilpie.

Market inquiries

16. On 21 November 2006 the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including other manufacturers of bread products as well as retailers of bread products.

Statement of issues

17. For the purposes of this Statement of Issues, the issues in this matter are divided into two categories, “issues that may raise concerns” and “issues unlikely to pose concerns”. The ACCC is seeking comments from market participants in relation to all issues.

Issues that may raise concerns

Likely effects on competition in the wholesale supply of bread

18. The merger parties and their competitors manufacture bread for wholesale distribution in, broadly, southern Queensland and northern New South Wales.
19. Market inquiries to date suggest that the merged firm would account for approximately half of the wholesale supply of bread products to bread retailers (including supermarkets, the route trade and the food service industry) in southern Queensland (as far north as Rockhampton) and northern New South Wales (as far south as Ballina).
20. Market inquiries suggest that the target firm, GSB, may be a vigorous and effective competitor in the market, and in particular:
 - that GSB focuses on the discount segment of the bread market and often wholesales bread at net wholesale prices below \$1 per loaf, depending on customer volumes; and
 - that, post-acquisition, “independent” supermarkets, the route trade and the food service industry may not be able to source bread products at similar prices to those offered by GSB.
21. Accordingly, there are two aspects of the proposed acquisition that may lead to competition concerns. These are:
 - that the proposed acquisition of GSB may remove a vigorous and effective competitor to the other bread manufacturers supplying bread products to retailers in southern Queensland and northern New South Wales; and
 - that the ability and incentive for tacit price coordination between the remaining plant bakers may be increased by the removal of GSB.

Invitation for further information - wholesale supply of bread

22. In light of the information set out above, there may be a substantial lessening of competition for the wholesale supply of bread products to bread retailers in southern Queensland (as far north as Rockhampton) and northern New South Wales (as far south as Ballina). Accordingly, the ACCC invites further information from interested parties regarding:
- (a) Whether the proposed acquisition would result in the removal of a vigorous and effective competitor offering wholesale supply of bread products to bread retailers in southern Queensland and northern New South Wales. In this regard, it is relevant:
 - whether, and if so why, GSB offers wholesale bread (particularly generic-label or “price fighting” bread) at prices significantly below that of other wholesale suppliers of bread in southern Queensland and northern New South Wales (particularly with regard to supply to “independent” supermarkets, the route trade and the food service industry).
 - (b) The level of importance of the wholesale prices offered by GSB to wholesale prices set more broadly by GSB’s competitors. In this regard, relevant factors include:
 - the extent to which GSB’s pricing of bread products affects pricing decisions of GSB’s competitors for similar bread products; and
 - the extent to which GSB’s competitors have lost trade to GSB due to GSB’s pricing of bread products (giving examples of instances where competitors have lost trade to GSB).
 - (c) The ability of customers of GSB (in particular, “independent” supermarkets, the route trade and the food services industry) to avoid an attempted price rise by the merged firm by sourcing supply from the merged firm’s competitors. In this regard, relevant factors include:
 - wholesale pricing by GSB’s competitors (namely Homestyle Bakeries, Gold Coast Bakeries and Goodman Fielder) in relation to a range of customers (eg. large supermarkets, “independent” supermarkets, the route trade and the food services industry); and
 - the level of capacity (including estimates of excess capacity) available to each plant baker servicing retailers in south east Queensland and northern New South Wales.
 - (d) Whether, and if so, how, hot bread shops, franchise bakeries and supermarket in-store bakeries provide a constraint upon the prices charged by wholesale bread manufacturers. Relevant factors include:

- the extent of competition for retail bread sales between bread supplied by plant bakers and bread supplied by hot bread shops, franchise bakeries and supermarket in-store bakeries; and
 - the extent to which wholesale bakeries come under price pressure from retailers seeking to compete against bread prices offered by hot bread shops, franchise bakeries and supermarket in-store bakeries.
- (e) The likely effect of the proposed acquisition on price and non-price competition. This includes whether the proposed acquisition may result in reduced price competition between the remaining plant bakeries. Factors which the ACCC will have regard to, in this respect, include:
- the level of transparency of wholesale bread prices between plant bakeries, including whether price transparency would be facilitated or hindered by, amongst other things:
 - the level of complexity of the terms of wholesale prices (such as rebates, volume discounts and minimum quantity takes);
 - the use of across-the-board changes to wholesale prices, including price lists; and
 - retail price transparency and the ability to obtain market intelligence as to actual wholesale prices through sales representatives and contacts with customers;
 - how the proposed acquisition would likely affect firm symmetry between the remaining plant bakeries (including in respect of market shares, cost structures and capacity constraints) and, as such, make any tacit price coordination more likely to occur;
 - whether there would be environmental factors that would facilitate or hinder tacit price coordination, including:
 - the level of transparency in respect of costs, output and/or capacity utilisation rates available to plant bakeries, such as through industry reports and inter-firm comparisons through relevant industry associations;
 - the level of market stability, including in respect of market shares over time, demand growth and market maturity;
 - the characteristics of customers and transactions, including whether buyers are large and may be able to hinder any tacit price coordination by concentrating orders;
 - the elasticity of demand for bread; and
 - the existence of multi-market contacts, co-operative and other contractual arrangements and structural links between the remaining plant bakeries.
- (f) How any ability of large supermarkets to constrain the merged firm's wholesale pricing would have a "flow-on" effect in terms of pricing

offered by plant bakers to “independent” supermarkets, the route trade and the food services industry.

- (g) Whether the merged firm would likely face a credible competitive constraint from existing competitors that would have the ability and incentive to supply at the prices currently offered by GSB to smaller customers (“independent” supermarkets, the route trade and the food services industry), having regard to any barriers to expansion. Relevant factors include:
- the level of minimum efficient scale required of existing competitors to provide an effective competitive constraint on the merged firm;
 - the likely costs and time involved in expanding an existing plant bakery to enable it to have sufficient capacity to provide an effective constraint upon the merged firm and whether the cost of the constituent parts are likely to be sunk;
 - the cost of expanding physical distribution capabilities sufficient for the likely level of output from such a facility and in order to supply throughout southern Queensland and northern New South Wales; and
 - the likelihood of an existing competitor acquiring contracts with large supermarkets to supply bread for housebrand/generic labels.
- (h) Whether the merged firm would likely face a credible competitive constraint from a new entrant with the ability and incentive to supply at the prices currently offered by GSB to smaller customers (“independent” supermarkets, the route trade and the food services industry). Relevant factors include:
- the level of minimum efficient scale required of a new entrant to provide an effective competitive constraint on the merged firm;
 - the likely setup costs and time involved in setting up a new plant bakery (capable of meeting minimum efficient scale referred to above) and whether the cost of the constituent parts are likely to be sunk;
 - the cost of establishing physical distribution capabilities sufficient for the likely level of output from such a facility and in order to supply throughout southern Queensland and northern New South Wales;
 - whether the requirement of a new entrant to achieve a level of minimum efficient scale may provide sufficient incentive to supply bread products at, or close to, the wholesale prices currently offered by GSB;

- the level of brand loyalty associated with bread products;
- relevant government regulations associated with setting up a plant bakery;
- the likelihood of a new entrant/s acquiring contracts with large supermarkets to supply bread for housebrand/generic labels; and
- evidence of recent entry or exit of plant bakers into any wholesale bread market in Australia.

Issues unlikely to pose concerns

23. At this stage, the ACCC considers that the proposed acquisition is unlikely to pose substantial competition concerns in relation to the supply of:
- packaged cakes;
 - bakery snacks;
 - flour; and
 - yeast.
24. Nonetheless, the ACCC will accept further submissions from industry participants and will further consider these product areas if it considers that such an assessment is warranted.

ACCC's future steps

25. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
26. 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.
27. Submissions are to be received by the ACCC no later than 1 March 2007. 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 as to the appropriate course of action to take to resolve any competition concerns that remain.
28. The ACCC intends to publicly announce its final view by 15 March 2007. 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.