



Australian
Competition &
Consumer
Commission

2 December 2010

Statement of Issues — Asahi Holdings (Australia) - proposed acquisition of P&N Beverages Australia

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition by Asahi Holdings Australia Pty Ltd (**Asahi**) of P&N Beverages Australia Pty Ltd (**P&N**).
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 20 December 2010 and anticipates making a final decision on 3 February 2011. 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 30 August 2010, Asahi lodged a submission seeking clearance from the ACCC for the proposed acquisition. On 1 September 2010 the ACCC commenced its public review and advised that it expected to issue a decision by 27 October 2010.

6. On 5 October 2010, the ACCC suspended its review timeline to await further information from Asahi which included details of a possible amendment to the structure of the proposed acquisition.
7. On 16 November 2010, the ACCC recommenced its review timeline. Details of the amendment to the proposed acquisition are provided in 'The Transaction' section below.

The parties

The Acquirer – Asahi Holdings (Australia) Pty Ltd

8. The Japanese-based Asahi Breweries Ltd owns the proposed acquirer Asahi Holdings (Australia) Pty Ltd which in turn owns Schweppes Australia Pty Ltd (**Schweppes**). Asahi bought Schweppes from Cadbury Schweppes in April 2009. The proposed acquirer will be referred to as Asahi in this paper but the name Schweppes will be used when referring to the products and brands made by that firm.

Schweppes Australia Pty Ltd

9. Schweppes manufactures, and sells at the wholesale level, a range of non-alcoholic beverages including carbonated soft drinks (**CSDs**), bottled water, fruit juice, energy drinks, cordials, sports drinks and iced tea. **Table 1** lists the main categories of products and brands manufactured by Schweppes.

Table 1 – Summary of Schweppes product categories and brands

Product category	Brand	
<i>Soft drink</i>	Pepsi	Schweppes
	Solo	Sunkist
	7-Up	Mountain Dew
	Passiona	Tarax
<i>Bottled water</i>	Cool Ridge	Fiji Water
	Spring Valley	
<i>Fruit juice</i>	Spring Valley Juice	
<i>Energy drink</i>	Monster	
<i>Cordials</i>	Cottee's	
<i>Sports drinks</i>	Gatorade	

Source: Schweppes Australia

10. Schweppes has eight manufacturing sites throughout Australia which produce in excess of 500 million litres¹ of its products each year. Schweppes sells those products to a wide range of retail outlets including supermarket chains, convenience stores, petrol stations and fast food outlets. Schweppes is also

¹ ACCC estimate based on figures provided by market participants.

the manufacturer of the Pepsi range of CSDs in Australia, which it produces under licence from PepsiCo. The ACCC understands that Schweppes does not presently produce any private label beverage products, although it has the necessary facilities and expertise to do so.

The Target - P&N Beverages Australia Pty Ltd

11. P&N is a privately owned manufacturer and wholesaler of non-alcoholic beverages including CSDs, bottled water, fruit juice, energy drinks, sports drinks and cordials. P&N's product range includes products which are sold using P&N's own brands (referred to as 'branded products') and products that are sold under brand names owned by others, such as supermarkets (referred to as 'private label products').
12. **Table 2** lists the main categories of branded and private label products supplied by P&N.

Table 2 – Summary of P&N product categories and brands

Product category	P&N's brands	P&N's private label customers
<i>Soft drink</i>	LA Ice	Woolworths
	Diet Rite	Coles
	Tru Blu	Aldi
	Waterfords	Franklins
	Pub Squash	
	Lido Lemonade	
	Ceda Creaming Soda	
	Brewer's Choice Ginger Beer	
	Crush	
	McSars Sarsaparilla	
	Club	
<i>Bottled water</i>	Frantelle	
	Tru Blu	
<i>Fruit juice</i>	Mini Pops	Woolworths
	Glo	Franklins
	Extra Juicy	Aldi
	Pop Tops	
	Apple Time	
	Smart Juice	
<i>Energy drink</i>	Wicked	
<i>Cordials</i>	Extra Juicy	
	Diet Rite	
<i>Sports drinks</i>	Play	

Source: P&N Beverages

13. P&N has four manufacturing sites around Australia, which produce more than 250 million litres² of its products each year. P&N sells a majority of its products through the supermarket chains with the remainder sold through smaller 'traditional' retail outlets such as milk bars and take-away stores.

The transaction

14. In August 2010, Asahi entered a Share Purchase Agreement (the purchase agreement) with P&N to buy 100% of P&N's shares.

² ACCC estimate based on figures provided by market participants.

15. Asahi has advised the ACCC on 16 November 2010, that if it acquires P&N, it will not be able to produce any of P&N's current branded and private label cola products, nor any new cola products.

Industry background

16. Both Asahi and P&N supply products in what may broadly be described as the 'non-alcoholic ready-to-drink' beverage industry (**the industry**). Estimates provided to the ACCC indicate that annual sales in this industry last financial year were between \$5-6 billion.
17. This industry includes product categories such as CSDs, fruit juice, bottled water, cordials, sports drinks, energy drinks and iced tea and is characterised by a number of key features including:
 - a) a small number of large, national firms account for the vast majority of sales and manufacturing for each of the relevant products, with the remainder made up of a large number of small state-based or regional manufacturers;
 - b) a strong position occupied by branded products, but a growing range of private label products;
 - c) the use of different supply channels to distribute and sell products; and
 - d) the existence of a small number of significant buyers in the grocery channel.

Manufacturers

18. As noted above, the industry in which Schweppes and P&N operate is characterised by a small number of large, national producers accounting for a large percentage of product sales. A large number of smaller manufacturers account for the remaining sales.

Carbonated soft drink

19. CSD products are by far the largest segment of the industry. They account for annual sales of between \$2.5billion and \$3 billion, or around 50% of total industry revenue.³ The products included in this category are cola and non-cola varieties, flavoured mineral waters and drink mixers.
20. CSDs are made from carbonated water, sugar (or a sugar substitute) and flavour and are sold in a variety of packages (such as glass bottles, plastic bottles and tin cans) and sizes (ranging from 250ml to 2.25 litres).
21. CCA and Schweppes are the largest suppliers of CSDs. P&N is the third largest supplier, and the only other significant manufacturer of branded

³ ACCC estimate based on figures provided by market participants.

products. Private label products also account for a significant proportion of CSD revenue (1%).

Fruit Juice

22. Fruit juice (chilled and ambient) accounts for annual sales of between \$700 million and \$800 million, or approximately 15% of industry revenue.⁴ Significant suppliers of fruit juice include National Foods (Berri), HJ Heinz (Golden Circle), P&N, Schweppes and Campbell's Australia. Private label products account for around 7% of sales by revenue.

Bottled Water

23. Bottled water accounts for annual sales of between \$600 million and \$700 million, or approximately 10% of industry revenue.⁵ Large manufacturers of bottled water include CCA, P&N and Schweppes. Private label products also make up a significant proportion (8%) of the sales of bottled water.

Cordial

24. Cordial accounts for annual sales of between \$150 million and \$160 million, or approximately 3-5% of industry revenue.⁶ Large manufacturers of cordial include Schweppes (Cottee's), HJ Heinz (Golden Circle), P&N and Bickfords. Private label products account for around 18% of sales.

Other beverages

25. Sports drinks, energy drinks and iced teas collectively account for around \$1 billion in sales, or approximately 20% of industry revenue. P&N accounts for approximately \$4 million, or less than 0.4% of sales for these products. P&N does not supply an iced tea product.

Branded and private label products

26. Another important feature of the industry is the historical dominance of branded products and the challenge to that sector by private label products.

Branded products

27. Branding has developed as one of the most important factors on which firms compete across each of the relevant products. Therefore the establishment of brands has become the most important point of differentiation undertaken by the industry's top firms with those firms making significant investment in marketing and advertising to protect and create brand loyalty.⁷
28. The most recognisable brands in the industry are found in the CSD market, (Coca-Cola, Pepsi and Schweppes). There are also a number of well known

⁴ ACCC estimate based on figures provided by market participants.

⁵ ACCC estimate based on figures provided by market participants.

⁶ ACCC estimate based on figures provided by market participants.

⁷ IBISWorld Industry Report C2185 – Soft Drink Manufacturing in Australia – February 2010.

fruit juice brands (Berri and Golden Circle), cordial brands (Cottee's) and bottled water brands (Mount Franklin and Pump).

29. There are a number of benefits associated with holding well known brands. Well known brands tend to be priced much higher than lesser known brands and private labels. Customer awareness, familiarity and preference for these branded products generally allows suppliers to charge a premium over the prices of lesser known products.

Private label

30. While brand is considered to be a key point of differentiation in the various product markets, price is another key area in which firms compete. Despite the importance of branding, each of the product markets has seen an increase in consumer acceptance of private label beverages in recent years which has resulted in an increase in competition between branded and private label products.
31. Private label products perform an important role in each of the relevant markets, as they offer consumers greater choice and variety across a range of price points. In particular, the lowest priced products in any given category are invariably private label products.
32. Private label products are also valuable to retailers as a means of bargaining with suppliers of branded products. Retailers often strategically display, promote and discount private label products to draw sales away from branded products. This can place pricing pressure on suppliers of branded products, who may offer these products at a lower wholesale price to prevent sales being lost to private label competitors. The success of this strategy for retailers is dependent on consumer preferences and the strength of the brand in question, as stronger brands are less likely to lose sales to private label products for a given difference in price.
33. Private label products also enable retailers to offer a greater range of products at a greater number of price points, while allowing retailers to achieve a good margin on the sale of lower priced goods.
34. The ACCC understands from its market inquiries to date that because private label contracts with supermarkets offer relatively low margins between the cost of production and the wholesale price and generally require national supply, it is highly advantageous for private label manufacturers to have a national manufacturing and distribution network. This helps to ensure that the manufacturer can operate profitably despite these low margins by minimising transportation and transaction costs.
35. Furthermore, in order to operate profitably, a private label manufacturer needs to have the capacity to produce high volumes of product so as to minimise fixed and procurement costs per unit of output through economies of scale. In P&N's case, additional scale has been achieved through supplying multiple private label customers as well as producing products under its own brands.

Supply channels

36. The products manufactured by the merger parties are distributed and sold through supply channels referred to as either the ‘measured market’ or the ‘non-measured market’.
37. The measured market consists of the following distribution channels:
 - a) **Grocery channel:** Consists mainly of supermarkets and accounts for approximately 60% (approximately \$3 billion) of gross annual revenue for the industry. The grocery channel is characterised by high turnover and lower margins compared to the other channels. The grocery channel is by far the largest of the supply channels and is characterised by the existence of a number of large buyers of the relevant products such as Coles, Woolworths, Metcash and Aldi.
 - b) **Traditional route:** Refers to milk bars, restaurants, take-away food outlets, bakeries and other outlets with accessible drinks fridges and accounts for approximately 30% (approximately \$1.5 billion) of gross annual revenue. The traditional route is characterised by lower turnover and higher margins than the grocery channels as well as providing an avenue for manufacturers to trial new beverages.
 - c) **Petrol station and convenience store channel:** Accounts for approximately 10% (approximately \$0.5 billion) of gross annual revenue for the industry.
 - d) **New channels:** Refers to outlets such as schools, sporting events, video shops and food courts for which little data is available.
38. The non-measured market consists of channels such as bars, clubs, hotels, cafes, restaurants and cinemas where beverages are less likely to be sold in measured quantities. P&N does not supply the non-measured market (all of its products are bottled, it does not supply post-mix product).

The ACCC invites market participants to comment on whether the ACCC’s description of the relevant industry is accurate and if there are any other factors which should be taken into account or given more/less prominence.

With/without test

39. When assessing a merger pursuant to section 50 of the *Trade Practices Act 1974*, the ACCC must consider the effects of the transaction by comparing the likely competitive environment post-acquisition if the transaction proceeds (the “with” position) to the likely competitive environment if the transaction does not proceed (the “without” position or “counterfactual” position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.

40. The ACCC understands that there is at least one other party (in addition to Asahi) interested in acquiring P&N if the proposed acquisition does not proceed. The ACCC therefore considers the two possible counterfactuals are that P&N will continue with its current ownership or that P&N will be acquired by an alternative buyer.
41. However, the ACCC is aware that there is minimal overlap between P&N and any likely potential alternative buyer. Accordingly, the ACCC considers that if either possible counterfactual is applied, the P&N business is likely to continue as a separate competitor in the foreseeable future, effectively representing a continuation of the status quo.

The ACCC invites market participants to provide information and evidence as to the likely counterfactual if the proposed acquisition does not proceed.

Market definition

42. The ACCC's preliminary view is that the relevant markets in relation to the proposed acquisition are likely to be separate national markets for the manufacture and wholesale supply of each of the following product categories:
 - a) CSDs (including mineral water);
 - b) bottled water;
 - c) fruit juice;
 - d) cordials;
 - e) sports drinks; and
 - f) energy drinks.
43. While it is clear that a given consumer may purchase products from several of the above categories, the ACCC considers that widespread substitution by consumers between these beverage categories in response to price changes is unlikely. For example, a consumer is unlikely to purchase bottled water instead of a CSD in response to a small but significant rise in the cost of the CSD.
44. Market inquiries indicated that supply side substitution between the categories is low, and that significant investment is required to switch a production line between beverage categories. Market inquiries also indicated that the need to develop a brand in order to market and sell a beverage product may prevent suppliers quickly switching between the production of different beverages. This is because of the costs associated with developing a brand and the time it would take to establish the brand. Consequently, the

ACCC considers there is limited supply side substitution between the different beverage categories.

45. The ACCC considers that each of the above categories forms a distinct product market—rather than being part of a single market consisting of all non-alcoholic ready to drink beverages. In both the CSD product market and the fruit juice product market, the ACCC considers that private label products, while not perfect substitutes, act as a constraint on branded products, such that these products compete with branded products in the markets.
46. Although it is not true for all suppliers, the major beverage suppliers, including Schweppes and P&N, typically have separate manufacturing plants and distribution networks in different states, territories or regions so as to reduce transportation and transaction costs. Nevertheless, while recognising that there may be geographic variations, the ACCC considers that the geographic dimension of the relevant markets are best considered on a national basis because:
 - a) the beverages sold by P&N and Schweppes (and their major competitors) are branded and marketed nationally; and
 - b) P&N and Schweppes's major customers (retailers) generally acquire these beverages on a national basis.

The ACCC invites market participants to comment on its proposed definition of the relevant markets.

Market inquiries

47. On 1 September 2010, the ACCC commenced its market inquiries in relation to the proposed acquisition. A range of interested parties provided submissions including Schweppes and P&N's competitors, customers and suppliers. As a result of this process, a number of competition concerns were raised.

Statement of issues

48. For the purposes of this Statement of Issues, the issues in this matter are divided into three categories; 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'.

Issues of concern

Carbonated soft drink market

49. The ACCC's preliminary view is that the proposed acquisition is likely to result in a substantial lessening of competition in the national market for the

wholesale supply of CSDs. The ACCC considers that this would occur primarily as a result of the removal of P&N as a strong competitor for the manufacture and supply of private label CSDs to supermarkets which would in turn reduce the competitive constraint imposed by those products on the broader CSD market.

50. The ACCC considers that the proposed acquisition will result in the removal of P&N as a strong competitor to Schweppes and CCA for the sale of branded CSDs. The ACCC is concerned that post acquisition, Schweppes will have the incentive and ability to increase the price of its branded CSDs. The ACCC also considers that the proposed acquisition is likely to increase the likelihood of the remaining firms in the market coordinating their activities in order to increase prices in the market.
51. The proposed acquisition will leave two significant suppliers of CSDs – along with a number of much smaller suppliers – and will remove a significant competitor. The loss of competitive tension resulting from the acquisition may increase the ability of the remaining significant suppliers to coordinate on prices. The ACCC is particularly concerned that the proposed acquisition will result in:
 - the removal of a vigorous competitor for the manufacture and supply of private label CSDs;
 - a reduction in the constraint provided by private label CSDs on the broader CSD market; and
 - the removal of an effective competitor in branded CSDs.
52. The ACCC's specific areas of concern are outlined below.

Market concentration

53. **Table 3** contains details of CSD sales for the largest manufacturers in Australia and the combined sales for all of the other manufacturers.

Table 3 – Largest manufacturers of CSD in Australia

Manufacturer	Approximate market sales (million \$)	Market sales (percentage)
Coca-Cola Amatil	2,000	72%
Schweppes	560	20%
P&N	100	3.4%
Private label*	31	1.1%
Other (20)	110	4%

Source: ACCC estimate based on figures provided by market participants .

* Includes private label CSDs supplied by P&N.

54. **Table 3** illustrates that Coca-Cola Amatil (CCA) and Schweppes are by far the largest manufacturers of CSDs in Australia with combined market sales of over 90%. **Table 3** also shows that P&N is the only other manufacturer of branded CSDs with significant revenue (3.4%) and that private label CSDs also account for 1.1% of sales of CSDs. P&N produces a large proportion of the private label CSDs sold in Australia.
55. It is relevant to note that the ‘Other’ manufacturers which are included in **Table 3** and account for approximately 4% of sales are made up of around 20 different firms. These firms range in size from small privately owned CSD manufacturers such as Bundaberg Brewed Drinks and Bickfords Australia to large multinational firms such as Fosters Group Limited which manufactures the Cascade range of CSDs. None of these firms has a market share greater than 1%.

Removal of a vigorous competitor for the manufacture and supply of private label CSDs

56. The ACCC understands that P&N, CCA and Schweppes are the only CSD manufacturers in Australia with the necessary size and distribution capacity to supply the volume of private label CSDs required by the major supermarket chains. The ACCC also understands that of these firms, only P&N currently chooses to supply private label CSDs.
57. If the merger proceeds, the number of manufacturers that could potentially supply these products on a national scale would be reduced from three to two. Schweppes is a potential supplier of private label CSDs and has negotiated with retailers to supply private label products. The ACCC considers that as CCA does not currently supply private label products and appears unlikely to participate in this segment of the CSD market in the near future, the merged entity would be the only remaining significant manufacturer of private label CSDs.
58. While Schweppes submits that it intends to continue to produce most of P&N’s current private label CSDs if the acquisition proceeds, the ACCC considers that post-acquisition, Schweppes would not have the same strong

incentives P&N currently has to compete vigorously to supply low priced, private label CSDs. The merged entity would likely face no major competitors for the supply of these products and, unlike P&N, would have a strong incentive instead to favour its higher margin branded products by increasing the price of its private label CSDs.

59. The ACCC has been advised by Asahi that if it acquires P&N Beverages, the merged entity will not be able to produce any of P&N's current branded or private label cola products, nor any new cola products. As a result, wholesale acquirers of private label cola CSDs will not be able to source supply from the merged entity. This will remove a significant supplier of private label cola CSDs from the market.
60. The removal of supply of P&N's cola CSDs post acquisition will force retailers to seek alternative supply for cola products. Information from market inquiries indicates that potential alternative suppliers of private label CSDs lack the size and distribution necessary to compete for national private label contracts. The ACCC considers that retailers may have to contract with a range of smaller state based CSD manufacturers to obtain private label cola supply, and lose any advantages associated with the production of a large volume of CSDs – potentially increasing the price of private label products. The ACCC is continuing to consult on this matter and seeks information from market participants on the likely effect of the removal of P&N's cola products.
61. The ACCC notes that there are a number of smaller, state based suppliers of private label and branded CSDs in Australia. Market inquiries to date have indicated that these businesses are not able to supply private label CSDs on the scale required by national supermarkets. The ACCC invites further information on the competitive influence of these suppliers.

Reduced constraint provided by private label CSDs on the broader CSD market

62. Market inquiries to date have indicated that while premium brands compete most closely with each other, private label CSDs are also important competitors to all other CSD products sold by supermarkets, including branded products, and as the lowest priced products in the market they impose a significant competitive constraint on price across all competitors.
63. The ACCC considers that the removal of P&N as a private label supplier of CSDs is likely to provide a strong incentive for the merged entity to increase the price of its private label CSD products. If the price of private label CSDs was to increase, the competitive constraint that they pose on both CCA and Schweppes' branded products would be reduced. The ACCC considers that the removal of P&N as a private label supplier is likely to allow Schweppes and CCA, as the two remaining significant suppliers of CSDs, to increase the price of their branded CSD products.

Removal of an effective competitor in branded carbonated soft drink

64. The ACCC is also concerned that the proposed acquisition would result in the removal of an effective third competitor to Schweppes and CCA for the sale of branded CSDs.
65. The ACCC considers that P&N's branded CSDs, including LA Ice Cola, Pub Squash and its other 'Tru Blu' branded soft drinks, offer a lower priced alternative to both Schweppes and CCA's branded products while still offering consumers a known national brand, which is important to many consumers. In this way P&N's products act as an effective competitor to other branded CSD products.
66. Market inquiries have indicated that P&N acts as a vigorous and effective competitor in the supply of CSDs, and is noted for consistently being an inexpensive supplier in comparison to others in the market. The ACCC considers that P&N provides an important constraint on the branded products of Schweppes and CCA, both through its supply of low cost private label and branded products.
67. The ACCC is concerned that post acquisition, Schweppes and/or the other remaining firms in the market may be able to increase their prices across the range of CSD products they offer. In particular, the ACCC considers that the removal of P&N as a vigorous and effective competitor in the market may reduce the incentive for the remaining firms to compete strongly in relation to CSDs, and may bring about a greater risk of coordination of pricing decisions by the remaining firms.

Barriers to entry and expansion

68. The ACCC considers that barriers to entry and expansion in the market for CSDs are relatively high. In particular, the ACCC understands that the costs associated with establishing a national manufacturing and distribution network necessary for supplying private label products on a large scale are significant.
69. The ACCC considers that the supply of private label products alone, which return a low margin, may be insufficient, both in terms of return on investment and in terms of scale of production, to justify investment in plant and equipment necessary to supply on a national basis. The ACCC considers that a new entrant or a participant looking to expand would need to also supply higher margin branded product to attain the volume and return necessary to undertake such entry or expansion.
70. The ACCC is concerned that entrants wishing to compete in the branded segment of the market face substantial barriers in addition to those already discussed, including the need to establish well known and accepted brands and to gain access to supermarket shelf space. The costs associated with brand development are largely sunk. Market inquiries revealed a number of examples where a brand has failed, despite significant investment by the supplier that cannot be recouped.

71. P&N has invested substantial sums over more than 20 years to establish its brands. It has built up significant access to supermarket shelf space for its branded products and has grown market share by discounting and offering low priced branded products as an alternative to the higher priced branded products.
72. Given the nature of these barriers and the necessary investment and time needed to overcome them, the ACCC considers it unlikely that even a major supermarket chain would be willing and able to sponsor timely new entry or expansion on a sufficient scale to replace the competitive constraint that would be lost as a result of the proposed acquisition.

The ACCC invites market participants to comment on its competition concerns in relation to the CSD market including:

- *whether P&N is a strong competitor for the manufacture and supply of private label CSDs;*
- *the extent to which private label CSDs are a competitive constraint on the price of branded CSDs;*
- *whether P&N's branded CSDs exert a competitive constraint on the prices of other branded CSD products;*
- *whether there are economies of scale such that a nationwide production capability for CSDs is necessary to win a contract for the supply of private label and/or branded CSDs on a national level;*
- *identifying any barriers to entry to manufacturing and supplying CSDs; and*
- *the likelihood of a new entrant or existing competitors (for example, existing small manufacturers of CSDs) being able to replace, in a timely manner, the competitive constraint provided by P&N through its supply of private label and branded products. Please identify any specific barriers to entry to manufacturing and supplying private label CSDs, and please consider whether supermarkets may be willing and able to sponsor such entry or expansion.*

Issues that may raise concerns

Bottled water market

73. The ACCC considers that the proposed acquisition may raise competition concerns in the national market for the wholesale supply of bottled water. In particular, the ACCC notes that the proposed acquisition would result in the removal of P&N as a vigorous competitor that acts as a competitive constraint on the other firms in the market, especially through its Frantelle range of bottled water.

74. **Table 4** contains sales information for the largest manufacturers of bottle water in Australia.

Table 4 – Largest manufacturers of Bottled Water in Australia

Manufacturer	Approximate market sales (millions \$)	Market sales (percentage)
CCA	300	49
P&N	60	10
Private Label	55	9
Schweppes	50	9
Fruacor	30	5
Other (36)	115	18

Source:ACCC estimate based on figures provided by market participants.

75. The sales figures contained in Table 4 illustrate that CCA, which makes the Mount Franklin and Pump brands, has by far the largest share of bottled water sales with 49%. This is followed by P&N with 10% of sales through its Frantelle brand, private label with 9% (although unlike CSDs and fruit juice, P&N is not a significant supplier of private label bottled water) and Schweppes with 9% of sales. ‘Other’ manufacturers in **Table 4** account for 18% of sales of bottle water and are made up of around 36 different firms.
76. The ACCC is concerned that post-acquisition, the absence of the competitive constraint posed by P&N may provide Schweppes with the ability and incentive to increase prices, particularly given that few significant competitors would remain in the market. P&N’s Frantelle bottled water is a significant branded product and a close competitor to Schweppes’ branded bottled water brands. The removal of P&N as a competitor to Schweppes may remove a source of pricing constraint, potentially allowing Schweppes to increase the price of its branded bottled water.
77. The proposed acquisition may also increase the likelihood of the remaining firms in the market coordinating their activities in order to increase prices in the market. The proposed acquisition will leave only two significant suppliers of bottled water, and will remove a significant competitor. The loss of competitive tension resulting from the acquisition may increase the ability of the remaining firms to coordinate on prices, particularly given that only two significant firms will supply bottled water post acquisition.
78. The ACCC notes that the market share made up by smaller suppliers (listed as other in Table 4) and private label supply is high. The ACCC considers that there may be more suppliers in this market capable of supplying private label product and branded product in competition with the merged entity. The ACCC therefore invites further information as to whether competition from existing bottled water suppliers for the supply of private label or branded

bottled water will be sufficient to prevent a substantial lessening of competition in this market as a result of the proposed acquisition.

The ACCC invites market participants to comment on its concerns in relation to the bottled water market including:

- *whether P&N is a vigorous competitor and to what extent it acts as a competitive constraint on Schweppes;*
- *identifying any substantial barriers to entry and expansion in the manufacture and supply of bottled water, and*
- *whether the removal of the competitive constraint imposed by P&N would be likely to provide Schweppes and the other remaining firms with the ability and incentive to increase prices. In responding, please consider whether competition from existing market participants would prevent any such price increases, and please explain why or why not.*

Fruit juice market

79. The ACCC considers that the proposed acquisition may raise competition concerns in the national market for the wholesale supply of fruit juice. In particular, the ACCC notes that the proposed acquisition would result in the removal of a strong competitor for the manufacture and supply of private label fruit juice which may in turn reduce the competitive constraint imposed by those products on the supply of fruit juice products.

Market concentration

80. **Table 5** contains details of the market sales of the largest manufacturers of fruit juice in Australia along with the combined market sales of all other manufacturers.

Table 5 – Largest manufacturers of Fruit Juice in Australia

Manufacturer	Market sales (millions \$)	Market sales (percentage)
National Foods (Berri)	250	33
HJ Heinz (Golden Circle)	130	17
P&N	85	11
Private label	50	7
Schweppes	35	5
Campbell's Australia	34	4
Coca-Cola Amatil	30	4
Other (52)	150	19

Source: ACCC estimate based on figures provided by market participants.

81. **Table 5** illustrates that the Berri fruit juice brand (which is owned by National Foods) and the Golden Circle fruit juice brand (which is owned by HJ Heinz) account for more than 50% of all fruit juice sales.
82. **Table 5** also shows that P&N has a significant presence with 11% of sales as do private label products which have 7% of sales (P&N accounts for a significant proportion of private label sales). Schweppes and Campbell's Australia (manufacturer of the V8 range of products) each account for around 5% of sales.
83. 'Other' manufacturers in **Table 4** account for just over 19% of sales of fruit juice products and are made up of more than 50 different firms. These firms include small boutique brands such as Nudie Pty Ltd and large multinational firms such as CCA and Glaxosmithkline Australia Pty Ltd (manufacturer of the Ribena range of products).

Manufacture and supply of private label fruit juice

84. The ACCC understands that P&N and Schweppes each have the necessary size and distribution capacity to supply the volume of private label fruit juice required by the major supermarket chains. The ACCC considers that there are relatively few fruit juice manufacturers in Australia capable of supplying these volumes.
85. The proposed acquisition would result in the removal of a significant competitor for the manufacture and supply of private label fruit juice and reduce the number of manufacturers that could potentially supply these products on a national scale.
86. The ACCC considers that post-acquisition, Schweppes' incentive to compete vigorously to continue to supply P&N's private label fruit juices may be reduced as it would face fewer competitors and would have incentives to favour its own more profitable branded products by increasing the price of private label fruit juice.

87. Such a lessening of competition for the supply of private label fruit juice may in turn reduce the competitive constraint imposed by those products on branded fruit juice products sold through the grocery channel.
88. However, the ACCC notes that there may be some manufacturers capable of supplying large quantities of private label product in this market. The ACCC therefore invites further information as to whether competition from existing juice producers for the supply of private label juice will be sufficient to prevent a substantial lessening of competition in this market as a result of the proposed acquisition.

Removal of an effective competitor for the supply of branded fruit juice

89. The ACCC also considers that the proposed acquisition may reduce the competitive constraint imposed by P&N's lower priced branded fruit juices on premium brand fruit juice.
90. The ACCC considers that P&N's branded fruit juice, including Extra Juicy, Mini Pops, Glo and Smart Juice, offer a lower priced alternative to the premium branded products offered by National Foods, HJ Heinz and Schweppes, while still offering consumers a known national brand, which is important to many consumers.
91. In this way, P&N's products appear to act as an effective competitor to the premium branded products. The ACCC is concerned that post-acquisition, Schweppes and/or the other remaining firms in the market may be able to increase their prices across the range of fruit juice products they offer. In particular, the ACCC considers that the removal of P&N as a competitor in the market may reduce the incentive for the remaining firms to compete strongly in relation to fruit juice, and may bring about a greater risk of coordination of pricing decisions by the remaining firms.

Barriers to entry and expansion

92. The ACCC considers that barriers to entry and expansion in the market for fruit juice are relatively high. As with CSDs, the ACCC considers that there are significant costs associated with establishing a national manufacturing and distribution network required for large scale supply of private label fruit juice products.
93. However, the existence of a number of larger branded competitors in this market, when compared with the CSD market, may indicate that expansion by an existing competitor into private label supply is more likely in this market.

The ACCC invites market participants to comment on its competition concerns in relation to the fruit juice market including:

- *whether P&N is a strong competitor for the manufacture and supply of private label fruit juice;*
- *whether and to what extent private label fruit juice constrains the price of branded fruit juice;*
- *identifying any other existing or potential suppliers of private label fruit juice;*
- *identifying any substantial barriers to entry and expansion in the manufacture and supply of fruit juice;*
- *identifying any specific barriers to entry to manufacturing and supplying private label fruit juice; and*
- *whether P&N's branded fruit juice constrains the prices of other branded fruit juice products.*

Cordial market

94. The ACCC considers that the proposed acquisition may raise competitive concerns in the national market for wholesale supply of cordial by removing a strong competitor for the manufacture and supply of branded cordials to consumers via supermarkets. **Table 6** contains sales information for the largest manufacturers of cordial in Australia.

Market concentration

Table 6 – Largest manufacturers of Cordial in Australia

Manufacturer	Approximate market sales (millions \$)	Market sales (percentage)
Schweppes (Cottee's)	95	44
HJ Heinz (Golden Circle)	35	17
Private label	25	12
P&N	20	9
Bickfords	18	8
Other (18)	21	10

Source: ACCC estimate based on figures provided by market participants.

95. On the basis of the data in Table 6, the proposed acquisition will lead to the combination of the largest and third largest suppliers of branded cordial products, resulting in the merged entity holding around 53% of sales in the market. The next significant competitor in this market is HJ Heinz, with around 17% market share.

Removal of an effective competitor in the supply of branded cordial

96. **Table 6** shows that Schweppes is the largest manufacturer and P&N the third largest manufacturer of branded cordials in Australia. The ACCC also understands that P&N has been an effective competitor in this market, offering a low priced branded range of cordials which provide consumers with an alternative to the higher priced premium brands of cordial.
97. The ACCC considers that the removal of P&N as a competitive constraint may provide Schweppes with the ability and incentive to increase its prices, given that relatively few significant competitors would remain in the market. The ACCC is also concerned that, post-acquisition, Schweppes and the other remaining firms may have an increased incentive and/or ability to coordinate their activities in order to increase prices.
98. Private label products account for a significant proportion of sales in this market, and P&N does not produce private label cordial. Therefore the potential concerns identified by the ACCC in this market are confined to issues associated with branded cordials as set out above, and do not appear to arise in relation to private label cordials.

The ACCC invites market participants to comment on its concerns in relation to the cordial market including:

- *whether P&N is a vigorous competitor and to what extent it acts as a competitive constraint on Schweppes;*

- *identifying any substantial barriers to entry and expansion in the manufacture and supply of cordial, and*
- *whether the removal of the competitive constraint imposed by P&N would be likely to provide Schweppes and the other remaining firms with the ability and incentive to increase prices. In responding, please consider whether competition from existing market participants would prevent any such price increases, and please explain why or why not.*

Issues unlikely to pose concerns

Energy drink market

99. The ACCC considers that the proposed acquisition is unlikely to raise concerns in relation to the market for the manufacture and supply of energy drinks.
100. While both P&N and Schweppes manufacture energy drinks, three other manufactures, Frucor Beverages Ltd (manufacturer of 'V'), Red Bull Ltd and CCA (manufacturer of 'Mother') account for around 90% of sales.
101. Schweppes is the fourth largest manufacturer of energy drinks with a 4% share of sales. However, as P&N accounts for less than 1% of sales and it is not considered to be a vigorous competitor in this market, the ACCC's preliminary view is that its removal from the market is unlikely to raise substantial competition concerns.

Sports drinks

102. The ACCC considers that the proposed acquisition is unlikely to raise concerns in relation to the market for the manufacture and supply of sports drinks.
103. Schweppes (Gatorade) and CCA's (Powerade) products account for around 93% of sports drink sales. However, P&N (Play) accounts for less than 1% of sales and market inquiries to date indicate that it does not appear to be an especially well known or vigorous and effective competitor capable of disrupting or drawing a significant competitive response from larger competitors. The ACCC therefore considers that the removal of P&N from this market is unlikely to raise substantial competition concerns.

Supply of inputs

104. In some situations a merger of two significant acquirers of an input(s) can substantially lessen competition for the acquisition of that input(s). The ACCC sought the view of competitors and suppliers to the merger parties to determine whether the proposed acquisition could potentially result in the merged entity either having the ability to decrease the price of inputs by a significant amount, or to foreclose rival firms from accessing key inputs, such as packaging, water, fruit, sugar, artificial colouring and flavouring agents.

105. The ACCC has not received any information to indicate that the proposed acquisition would substantially lessen competition in relation to markets for the supply of inputs.

Bundling

106. A merger can substantially lessen competition if the merged firm could alter its product offerings in a way that forecloses its rivals and reduces the competitive constraint they provide. For example, if the merged firm can bundle or tie its complementary products by offering benefits (such as discounts or rebates) when they are purchased together, they may raise the cost of, or otherwise limit, rival firms' access to a sufficient customer base and in some circumstances deny rival firms access to customers altogether.
107. While concerns have been raised about bundling in this industry in the past,⁸ the ACCC has not received any information to indicate that the proposed acquisition would substantially lessen competition as a result of the merged firm being able to bundle products. A number of market participants have submitted that neither of the merger parties has a 'must have' product on the same scale as CCA and neither party has the same penetration in the traditional route that CCA has created as a result of its in-store refrigerators. Consequently, the ACCC considers that the merged entity is unlikely to have the ability or incentive to utilise bundling as a means of preventing its rivals from supplying retailers.

ACCC's future steps

108. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
109. 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.
110. Submissions are to be received by the ACCC no later than 20 December 2010. 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 in light of the issues raised above.
111. The ACCC intends to publicly announce its final view by 3 February 2010. 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.

⁸ ACCC PCA - CCA-Berri – 2003.