

# Tribunal issues reasons for approval of Pfizer acquisition

 By [Albert Aukema](#)

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In its reasons for approving Aspen Nutritional's acquisition of Pfizer's infant nutrition business, issued on 2 April 2014, the Competition Tribunal cautioned the Department of Health regarding measures introduced to achieve the Department's policy objectives, which may inadvertently impact on competition.

Aspen Nutritional's acquisition of the Pfizer infant nutrition business followed an order by the Competition Tribunal that Nestlé, which acquired the worldwide infant nutrition business of Pfizer, divest itself of the infant nutrition business in South Africa through a rebranding remedy. This was the first such remedy in South Africa and flowed in part from the strong brand loyalty consumers of infant nutrition display.

According to the Tribunal consumer brand choice is heavily influenced by the recommendations of health care professionals, family and friends. Consumers carry this brand choice into retailers when purchasing infant nutrition.

## Highly regulated market

The infant nutrition market, and in particular the infant milk formula market, is highly regulated internationally. Specifically, the World Health Organisation has adopted an international code of conduct that governs the marketing of breast milk substitutes to consumers. The rationale behind the code is to promote breastfeeding on the basis that it is superior to breast milk substitutes. To give effect to this code, the Minister of Health published South African regulations in December 2013. The effect of these regulations is to prohibit infant milk formula manufacturers from communicating the benefits of their products to consumers.

The Tribunal expressed concern regarding the evidence before it that the regulations, although clear in terms of their rationale, may also have the unintended consequence of raising barriers to entry for new entrants into the infant milk formula market as these new entrants would struggle to raise awareness of their brands with consumers.

The Tribunal encouraged the Competition Commission to engage with the Department of Health to ensure that they balance their respective policy objectives.

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