

The counterfactual

1. This appendix describes the counterfactual to the merger of Heinz and HP, in terms of the alternative outcome that we consider would have arisen out of the auction of HP by Danone. In this report, we refer to [X] as Company A, [X] as Company B, [X] as Company C and [X] as Company D.

The auction for HP

2. Danone was advised to sell the HP business by way of a competitive auction between selected interested parties in order to achieve the best possible price. An information memorandum was sent out to interested parties around 24 March 2005 and first round bids were received from ten potential acquirers (eight trade buyers and two private equity houses) by 14 April 2005. Second round offers were invited from all ten and received from five of these potential acquirers (four trade buyers and one private equity investor) by 2 June 2005. Thereafter further negotiations were held with three parties (Company A, Heinz and Company D) and HP was conditionally sold to Heinz on 18 June 2005. The deal was completed on 16 August once the conditions of the contract had been met.
3. In Table 1 we set out the chronology of the auction and the participants at each stage.

TABLE 1 **Heinz: chronology and parties to the auction for HP**

<i>Participant</i>	<i>Information Memorandum sent out around 24 March 2005*</i>	<i>First round bid submitted 14 April 2005</i>	<i>Access to data room 26 April to 2 June 2005</i>	<i>Second round bid submitted 2 June 2005</i>	<i>Further bids submitted 2–18 June 2005</i>	<i>Heinz bid accepted 18 June 2005</i>
Company A	X	X	X	X	X	
Company B	X	X	X	X		
Company C	X	X	X	X		
Company D	X	X	X	X	X	
Company E	X	X	X			
Company F	X	X	X			
Company G	X	X	X			
Company H	X	X	X			
Company I	X	X	X			
Heinz	X	X	X	X	X	X

Source: Danone.

*The Information Memorandum was also sent to seven other potential acquirers which did not bid at all.

Other possible outcomes of the auction

4. Danone told us that if it had not sold HP to Heinz, it would have sold HP to one of the four other bidders that made an offer in the second round of the auction. It told us that the primary consideration in deciding which offer to accept would have been the financial consideration offered. The only other significant factors which Danone told us would have been taken into account were the prospect of competition risk remaining with Danone and the financial capacity of any purchaser to deal with HP's pension commitments. Heinz had been prepared to take the UK competition risk upon itself by completing the acquisition prior to the OFT concluding its review of the case. Danone also told us that it could not rule out the remote possibility that it would have ended up owning the business for longer.

5. The five second round bidders for HP were Heinz, Company A, Company B, Company C and Company D, a private equity investor. [REDACTED]

6. Danone confirmed to us that it had a preference for a sale of the whole business to one buyer and that the second round bids of Company B and Company C, [REDACTED] were of lesser value than the other three second round bids. For these reasons they were not actively pursued by Danone.

7. Danone also told us that following the second round offers, Company A increased and amended its offer. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. Danone also told us that between 2 and 18 June 2005 Company D increased its offer twice. [REDACTED]
12. Danone told us (and Heinz confirmed) that, in addition to its bid of £470 million, [REDACTED]. Danone also told us (and Company A confirmed) that Company A's offer [REDACTED]. Finally Danone told us that, in its final offer, Company D was prepared to assume the pension fund liability, but that its offer was on the basis that it included the cost of doing so (ie it would not pay any extra as a result). [REDACTED]
13. It would appear from the foregoing analysis that the two most likely scenarios arising out of the auction for HP, if the deal with Heinz had not proceeded, would have been as follows:
 - (a) [REDACTED]; or
 - (b) Company D would have acquired HP.
14. If either of these had not occurred, we cannot exclude that one of two other scenarios would have occurred:
 - (c) Danone would have retained HP, at least in the UK and at least in the short term.

(d) Company B would have acquired the UK business of HP from Danone.

15. [X] We therefore consider that the counterfactual to the merger with Heinz would have been a merger of HP with Company A and that Company A would have immediately sold the HP sauces business (including the Daddies brand and the rights to HP baked beans and pasta meals) to Company B.

16. In this case we believe that, in the absence of the merger, HP and Daddies sauces would have remained separate from Heinz; and that HP-branded baked beans and tinned pasta products would also have remained available in competition with Heinz.