



Public Competition Assessment

19 August 2011

Wesfarmers Ltd - proposed acquisition of interests in Burrup Holdings Ltd and/or Burrup Fertilisers Pty Ltd

Introduction

1. On 27 July 2011, the Australian Competition and Consumer Commission (ACCC) announced its decision not to oppose the proposed acquisition of interests in Burrup Holdings Ltd (**Burrup Holdings**) and/or Burrup Fertilisers Pty Ltd (**Burrup Fertilisers**) (together, **Burrup**) by Wesfarmers Ltd (**Wesfarmers**) (the **proposed acquisition**). The ACCC decided that the proposed acquisition would be unlikely to have the effect of substantially lessening competition in any relevant market in contravention of section 50 of the *Competition and Consumer Act 2010* (the **Act**).
2. The ACCC made its decision on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.

Public Competition Assessment

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
 - a merger is opposed;
 - a merger is subject to enforceable undertakings;
 - the merger parties seek such disclosure; or
 - a merger is not opposed but raises important issues that the ACCC considers should be made public.
4. This Public Competition Assessment has been issued because the proposed acquisition is considered to raise issues of interest to the public.

5. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the public to circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change.
6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
7. Public Competition Assessments outline the ACCC's principal reasons for forming views on a proposed acquisition at the time the decision was made. As such Public Competition Assessments may not definitively identify and explain all issues that the ACCC considers arise from a proposed acquisition. Further, the ACCC's decisions generally involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources.

The parties

The acquirer: Wesfarmers Ltd

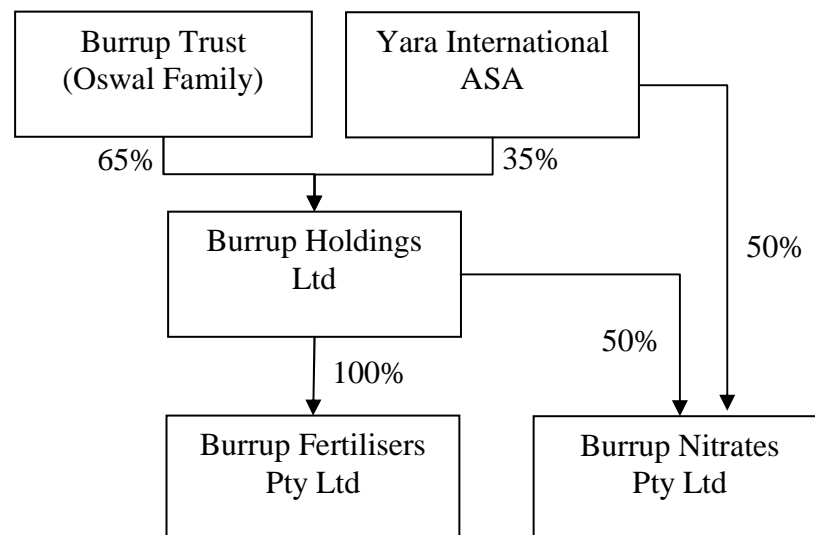
8. Wesfarmers is an Australian listed public company with business operations in the retail, resources, insurance, chemicals, energy, fertilisers and industrial sectors.
9. Wesfarmers subsidiary CSBP Limited (**CSBP**) operates a vertically integrated ammonia, ammonium nitrate and fertiliser complex located at Kwinana near Perth, Western Australia. For ease of reference, Wesfarmers and CSBP are referred to collectively as Wesfarmers for the remainder of this document.
10. Wesfarmers announced in early 2010 that it proposes to expand its current ammonium nitrate production capacity at Kwinana (**the proposed Wesfarmers expansion**).
11. Wesfarmers also has a 50% interest in Queensland Nitrates Pty Ltd (**QNP**) which operates a fully integrated ammonia and ammonium nitrate plant near Moura in central Queensland.

The target: Burrup Holdings Pty Ltd/Burrup Fertilisers Pty Ltd

12. Burrup Holdings is an Australian based private company which is 65% owned by the Oswal family and 35% by Yara International ASA (**Yara**). Burrup Fertilisers, which is a wholly owned subsidiary of Burrup Holdings, owns and operates an ammonia plant located on the Burrup Peninsula, Western Australia, approximately 300 kilometres from the Pilbara region.

13. The ammonia facility has been operational since June 2006 and is capable of producing 760,000 tonnes of ammonia annually, which represents approximately four percent of world production of traded ammonia. The facility is not vertically integrated, and all of the ammonia produced is sold to Yara pursuant to a 20 year off-take agreement (**Yara off-take agreement**).
14. Burrup Nitrates Pty Ltd (**Burrup Nitrates**) is 50% owned by Burrup Holdings, and 50% by Yara. Burrup Nitrates proposes to construct and operate an ammonium nitrate facility adjacent to Burrup Fertilisers ammonia plant (the **Burrup Nitrates plant**). The Burrup Nitrates plant is expected to have a capacity of 350,000 tonnes per annum and is expected to produce explosives-grade ammonium nitrate (**EGAN**).
15. Figure 1 below represents the ownership structure of Burrup:

Figure 1: Burrup Ownership Structure



Other industry participants

Yara

16. Yara is a Norwegian based multinational chemical company, listed on the Oslo Stock Exchange. Yara produces nitrogen based fertilisers, ammonia, ammonium nitrate, urea and other nitrogen-based chemicals. Yara has an Australian subsidiary, Yara Australia Pty Ltd. Internationally, Yara has operations and offices in 50 countries, and sells product to more than 120 countries.
17. Under a 20 year off-take agreement which Yara has signed with Burrup, Yara is the exclusive purchaser of all ammonia produced by Burrup. The ammonia purchased by Yara is sold to customers in Australia including Orica and Wesfarmers, and exported from Burrup to overseas markets.

Orica Ltd

18. Orica Ltd (**Orica**) is an Australian-based publicly listed company which operates through three platforms; Orica Mining Services, Orica Chemicals and Minova.
19. Orica Mining Services operates an integrated ammonia and ammonium nitrate facility at Kooragang Island in New South Wales and an ammonium nitrate facility at Yarwun in Queensland. In addition to these Australian-based facilities Orica has interests in ammonium nitrate production facilities in the Philippines, Canada, Mexico, the United States of America and Thailand.

Incitec Pivot Ltd

20. Incitec Pivot Ltd (**Incitec Pivot**) is publicly listed on the Australian Securities Exchange and manufactures and supplies fertilisers, explosives products and industrial chemicals to Australian and overseas customers. Incitec Pivot distributes and markets explosives and related products through its subsidiary Dyno Nobel Pty Ltd.
21. Incitec Pivot operates ammonia plants at Phosphate Hill in Queensland, and Gibson Island in Queensland. Incitec Pivot also has a 50% interest in QNP (the other 50% interest in QNP being held by Wesfarmers), an integrated ammonia, ammonium nitrate and nitric acid plant at Moura, Queensland. Incitec Pivot is currently constructing an integrated ammonia and ammonium nitrate plant in Moranbah, Queensland.
22. Incitec Pivot's subsidiary, Dampier Nitrogen Pty Ltd, has announced plans to construct and operate an ammonium nitrate facility in Dampier, Western Australia, close to the current Burrup ammonia plant. Incitec Pivot is in the process of obtaining environmental approvals.

The proposed transaction

23. On 17 December 2010, receivers and managers of PPB Advisory (the **receivers**) were appointed to Burrup Fertilisers and certain shareholdings of its holding company, Burrup Holdings.
24. On 11 February 2011, Wesfarmers requested that the ACCC review the proposed acquisition in anticipation of an expected sale of interests in Burrup Holdings and/or Burrup Fertilisers. The ACCC review commenced on 14 February 2011. In its submission, Wesfarmers stated that it proposed to acquire all or part of Burrup Fertilisers, its assets or the shares in Burrup Holdings. If Wesfarmers acquired the shares of Burrup Holdings, it would also acquire a 50% interest in Burrup Nitrates.
25. In May 2011, the receivers commenced a process to sell the Burrup assets.

Industry Background

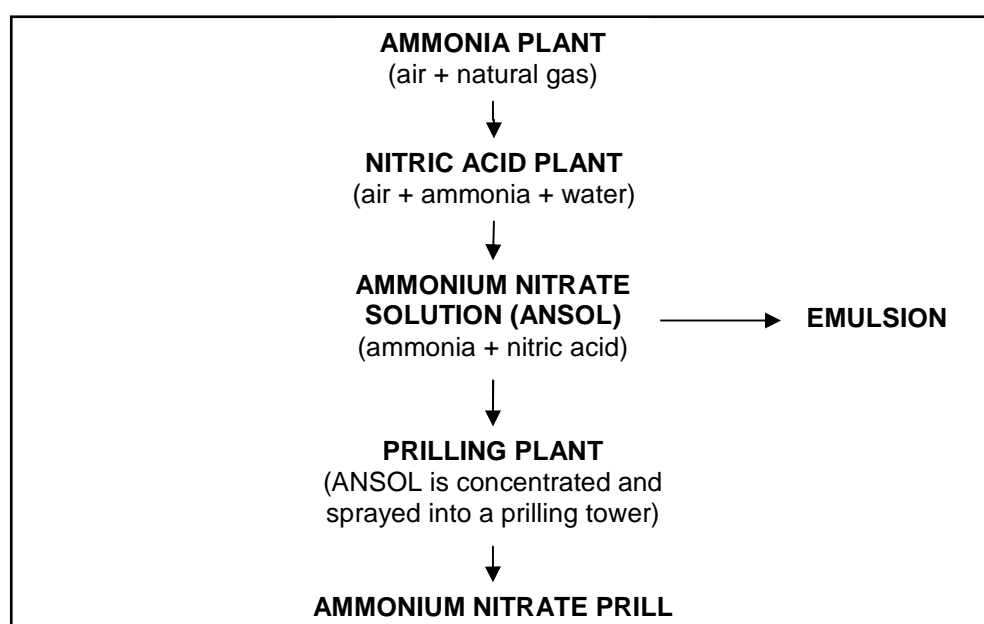
Ammonia

26. Anhydrous ammonia (**ammonia**) is a gaseous compound of nitrogen (extracted from air) and hydrogen (typically generated from natural gas) used in the production of nitrogen based fertilisers and in non-fertiliser applications such as metal leaching, plastic production, refrigerator gas and as an input to the production of ammonium nitrate for explosives.
27. According to Fertecon, global ammonia capacity was 204.5 million tonnes a year in 2010. This is forecast to rise to 236.7 million tonnes by 2020.¹
28. Ammonia is produced by manufacturers either for sale (known as merchant ammonia), or for own use at vertically integrated facilities (known as captive ammonia). Some producers of captive ammonia also trade in merchant ammonia. Operating on the Burrup Peninsula in Western Australia, Burrup is the largest and only exclusive merchant producer of ammonia in Australia (i.e. Burrup is not currently a captive producer of ammonia). Merchant ammonia is produced as a contestable source of ammonia in significant tradeable quantities.

Ammonium Nitrate

29. Ammonium nitrate, produced from feedstock ammonia, is a key input to the production of explosives and nitrogen based fertilisers. Ammonium nitrate is manufactured as a solution (**ANSOL**) and can be further processed to form a solid product in the form of granules known as ammonium nitrate prills (Figure 2).

Figure 2: Ammonium Nitrate Production Process



¹ Fertecon Limited, *Ammonia Outlook*, Issue 2010-3, January 2011.

30. There are three broad types of ammonium nitrate:
- ANSOL, which is used in the production of ammonium nitrate prills, liquid fertiliser and emulsion explosives;
 - Fertiliser grade ammonium nitrate (FGAN) – which are high density ammonium nitrate prills commonly used as a fertiliser but can be used in the production of emulsion explosives; and
 - EGAN² – which are low density ammonium nitrate prills used in the manufacture of explosives.
31. There are three manufacturers of ammonium nitrate in Australia: Wesfarmers, Orica and QNP (a 50:50 joint venture company owned by Wesfarmers and Incitec Pivot).
32. Globally, ammonium nitrate is largely used in the manufacture of nitrogen based fertilisers. However, greater levels of mining activity in Australia and regulatory restrictions relating to the transport and use of ammonia-based fertilisers have meant that the majority of ammonium nitrate produced in Australia is used to manufacture explosives. The mining industry will continue to account for the bulk of sales as mining production volumes are expected to grow, especially iron ore mining in the Pilbara region of Western Australia.

Timing

33. The following table outlines the timeline of key events in this matter.

Date	Event
14-Feb-2011	ACCC commenced review under the Merger Review Process Guidelines.
01-Mar-2011	Closing date for submissions from interested parties.
09-Mar-2011	ACCC requested further information from Wesfarmers. Former proposed date for announcement of ACCC's findings of 14 April 2011, amended to allow for provision of further information.
21-Mar-2011	ACCC received further information from Wesfarmers. ACCC timeline recommenced.
07-Apr-2011	ACCC timeline suspended pending receipt of further information requested from Burrup Holdings. Former proposed date of 28 April 2011 delayed to allow provision of information.
18-Apr-2011	ACCC received further information from Burrup Holdings. ACCC timeline recommenced.
11-May-2011	ACCC published a Statement of Issues outlining preliminary competition concerns.
20-May-2011	ACCC requested further information from Wesfarmers. Former proposed decision date of 23 June 2011 delayed. ACCC timeline suspended pending receipt of information requested.
30-May-2011	Closing date for submissions relating to Statement of Issues.
04-Jul-2011	ACCC received further information from Wesfarmers. ACCC timeline recommenced
27-Jul-2011	ACCC announced it would not oppose the proposed acquisition.

² EGAN is also known as technical ammonium nitrate (TAN) and industrial grade ammonium nitrate.

Market inquiries

34. The ACCC conducted market inquiries with a range of industry participants, including competitors, potential competitors, customers and other interested parties. Submissions were sought in relation to the substantive competition issues.

Statement of Issues

35. The ACCC published its Statement of Issues (**the SoI**) on 11 May 2011 identifying one potential competition issue. In the SoI the ACCC's preliminary view was that the proposed acquisition may raise competition concerns in the market for the supply of ammonium nitrate in Western Australia. The ACCC was concerned that the proposed acquisition could foreclose pro-competitive new entry in this market by preventing rival bidders from acquiring and developing the proposed Burrup Nitrates plant.
36. The ACCC also identified a relevant market for the purposes of assessing the proposed acquisition to be a market for the supply of ammonia in Western Australia. The ACCC's preliminary view was that the proposed acquisition was unlikely to raise competition concerns in the market for the supply of ammonia in Western Australia.

With/without test

37. In assessing a merger pursuant to section 50 of the Act, the ACCC must consider the effects of the transaction by comparing the likely competitive environment post-merger if the transaction proceeds (the "with" or "factual" position) to the likely competitive environment if the transaction does not proceed (the "without" or "counterfactual" position).
38. In the absence of the proposed acquisition, the ACCC considered that it was likely that Burrup Holdings would be acquired by another entity. This was due to the fact that the existing assets of Burrup – primarily, the ammonia facility and favourably priced long-term gas supply contract – were highly regarded and sought after in the industry. As a result, there was strong interest from prospective purchasers.
39. Rival bidders to Wesfarmers included, but were not limited to, Orica and Incitec Pivot. The ACCC did not form a view as to whether any particular bidder should be identified as the likely alternative bidder without the proposed acquisition, as it would not have impacted on the ACCC's decision in this matter.
40. As part of its assessment of the future with and without the acquisition, the ACCC assessed whether the Burrup Nitrates plant was likely to be built and produce EGAN in the absence of the proposed acquisition.

41. Based on demand forecasts for EGAN, the ACCC considered that a single EGAN plant or expansion was likely to be sufficient to meet forecast demand for EGAN in Western Australia for the foreseeable future. Consequently, the ACCC considered that only one EGAN plant or expansion was likely to be constructed in Western Australia in this time frame. The ACCC formed the view that Wesfarmers was likely to proceed with the proposed expansion of its existing ammonium nitrate plant at Kwinana, Perth, irrespective of the outcome of the Burrup Holdings sale process.
42. In forming the view that Wesfarmers was likely to proceed with its expansion, the ACCC had regard to the progress of the Wesfarmers proposed expansion, including the commitment of significant capital by the Board of Wesfarmers to this expansion. The ACCC also reviewed confidential term sheets and correspondence between Wesfarmers and its customers in relation to proposed supply from the expanded Wesfarmers plant. The ACCC also noted the announcement by Yara that the proposed Burrup Nitrates project had been delayed due to uncertainty surrounding the decision-making ability of the Board of Burrup Holdings. In the context of Wesfarmers continuing to make progress towards the construction of its plant expansion, such a delay made the Burrup Nitrates plant unlikely to proceed in the foreseeable future.
43. On the basis that Wesfarmers was likely to proceed with the expansion of its existing ammonium nitrate plant ahead of the proposed Burrup Nitrates plant, the ACCC formed the view that irrespective of the ownership of Burrup Holdings, it would not be likely to build an alternative EGAN plant in the foreseeable future.

Market One – Market for the supply of EGAN in Western Australia

Market definition

44. In the SoI, the ACCC identified a possible market for the supply of ammonium nitrate in Western Australia, on the basis of potential supply side substitutability between the production of different types of ammonium nitrate.
45. The ACCC invited market participants to comment on the proposed market definition, and in particular the ACCC sought comment as to whether a narrower market for the supply of EGAN might be more appropriate.
46. Information received by the ACCC subsequent to the SoI suggested that such supply side substitution was unlikely in Australia, due to costs associated with changing manufacturing processes as well as a lack of demand for FGAN in Australia. The ACCC also received information which confirmed that there was no demand side substitution between these types of ammonium nitrate.
47. Thus, the ACCC considered that one of the relevant markets in this matter was the market for supply of EGAN in Western Australia. However the ACCC noted that the competition assessment was unlikely to be materially different if a broader market definition had been adopted.

Competition analysis

48. In the SoI, the ACCC outlined a potential theory of harm whereby Wesfarmers acquisition of Burrup Holdings could have precluded new entry into the EGAN market by preventing construction of the Burrup Nitrates plant.
49. The ACCC invited market participants to comment on the likelihood that any rival bidder would develop the proposed Burrup Nitrates plant if the proposed acquisition by Wesfarmers did not proceed, as well as the likely competitive effects of such a plant being constructed.
50. For the reasons outlined above under ‘with/without test’, the ACCC found that it was unlikely that the Burrup Nitrates plant would be built in the foreseeable future regardless of who acquired Burrup Holdings. Thus, the ACCC found that the proposed acquisition would not be likely to substantially lessen competition in the market for the supply of EGAN in Western Australia by preventing construction of a new EGAN plant.
51. The ACCC also did not consider that the proposed acquisition of interests in Burrup by Wesfarmers was likely to raise barriers to entry for rival ammonium nitrate plants in Western Australia over the longer term when sufficient demand for such investment might exist. In the long term (beyond a four to five year timeframe), the proposed acquisition was unlikely to foreclose new entry as there would be sufficient lead time for a new entrant to proceed to secure foundation customers to underwrite an alternative ammonium nitrate plant in Western Australia. The ACCC had regard to the number of very experienced large scale and well resourced players in the industry which would be capable of new entry in the longer term.

Market Two – Market for the supply of ammonia in Western Australia

Market definition

52. Consistent with its preliminary views outlined in the SoI, the ACCC identified a further relevant market for the purposes of assessing the proposed acquisition to be a market for the supply of ammonia in Western Australia. The ACCC did not receive further information in regards to this market definition following the SoI.

Competition analysis

53. Consistent with its preliminary views outlined in the SoI, the ACCC formed the view that the proposed acquisition was unlikely to change the competitive dynamics in the market for the supply of ammonia in Western Australia in the foreseeable future.
54. This was primarily due to the existence of the Yara off-take agreement. As a result of this agreement, Yara will remain the exclusive purchaser of all ammonia produced by Burrup. Accordingly, the proposed acquisition would not have resulted in Wesfarmers having direct rights to the ammonia produced by Burrup.

55. The ACCC also noted that Wesfarmers and Burrup did not closely compete against each other in the supply of ammonia in Western Australia, given Wesfarmers plant was located at Kwinana (near Perth) and Burrup was located in far north Western Australia.
56. The ACCC did not receive any further submissions or information regarding the supply of ammonia following the release of the SoI.

Conclusion

57. On the basis of the above, the ACCC formed the view that the proposed acquisition of Burrup by Wesfarmers would not be likely to result in a substantial lessening of competition in either of the relevant markets in contravention of section 50 of the Act.