Public Competition Assessment

21 September 2011

Proposed merger between Teys Bros (Holdings) Pty Limited and Cargill Beef Australia

Introduction

1. On 6 July 2011, the Australian Competition and Consumer Commission (**ACCC**) announced its decision not to oppose the proposed merger between the beef processing operations of Cargill Beef Australia and Teys Bros (Holdings) Pty Limited (**proposed merger**). The ACCC decided that the proposed merger would be unlikely to have the effect of substantially lessening competition in any 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 merger, 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 merger raises issues of interest for participants in the Australian beef industry and the public.

5. By issuing a Public Competition Assessment, 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 are intended to outline to the general public the ACCC’s principal reasons for reaching a decision on a proposed acquisition. As such they 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

Teys Bros (Holdings) Pty Limited

8. Teys Bros (Holdings) Pty Ltd (**Teys**) is a beef processor which supplies to both domestic and overseas markets. Teys has meat processing plants (**abattoirs**) located at Rockhampton, Beenleigh and Biloela in Queensland and Naracoorte in South Australia.

9. Teys also holds a majority share in one beef feedlot, located approximately 20 kilometres west of Condamine on the southern Darling Downs of south-west Queensland. The feedlot is a joint venture operation involving Japanese corporations Prima and Itochu. In addition, Teys also owns a tannery/hide processing facility at Murgon in Queensland which processes hides for export.

Cargill Beef Australia

10. Cargill Australia Limited and Cargill Meat Processors Pty Ltd (together, **Cargill**) are Australian subsidiaries of Cargill Inc, a privately owned company involved in agricultural production and trading worldwide.

11. Cargill’s Australian meat operations are all located in New South Wales, and consist of two abattoirs and a feedlot. The abattoirs are located at Tamworth and Wagga Wagga, while the feedlot is located in Stockinbingal.

12. Cargill Inc has recently acquired the commodity management businesses of AWB Ltd, a grain trading and marketing company with holdings in grain storage, transport and handling operations.

The proposed transaction

13. The proposed merger will result in Teys operating the current Teys and Cargill meat processing and feedlot businesses as a joint venture. The joint venture will be 50 per cent owned by Cargill and 50 per cent owned by Teys Investments Pty Limited. The Chairman and CEO of the joint venture company will be appointed by Teys.

Other industry participants

Feedlots

14. There are around 600 feedlots within Australia, the majority of which are located in areas that are in close proximity to cattle and grain supplies.[1] In addition to those operated by Teys and Cargill, large feedlots on the eastern seaboard of Australia include those operated by JBS Swift, Elders, Nippon and Mort & Co. A large number of small feedlots also operate along the eastern seaboard.

Abattoirs

15. There are a large number of competing abattoirs operating in the same geographic locations as Teys and Cargill. These include facilities operated by JBS Swift, Nippon, Australian Country Choice, Kilcoy Pastoral Company and Bindaree Beef in the Northern NSW/ Southern Queensland region and JBS Swift, Nippon, MC Herd and Hardwicks in the Southern NSW, Northern Victoria and South Australian region.

Timing

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

Date	Event
13-May-2011	ACCC commenced review under the Merger Review Process Guidelines.
03-Jun-2011	Closing date for submissions from interested parties.
06-Jul-2011	ACCC announced it would not oppose the proposed merger.

Market inquiries

17. The ACCC conducted extensive market inquiries with a large number of industry participants at all levels of the beef supply chain including primary producers of grass fed cattle, competing feedlots and abattoirs, customers for processed beef products, saleyards and selling agents, industry associations and other representative bodies and grain market participants.

[1] Australian Lot Feeders' Association, available at http://www.feedlots.com.au

Industry Background

The Australian beef industry

18. Approximately 8.1 million cattle were slaughtered in Australia in 2009-10, out of a total cattle herd of around 27.4 million. This equated to the production of 2,109 kilotons of beef and veal.[2]

19. Australia is a net exporter of beef and currently exports around 45 per cent of its total processed beef and veal production.

20. In addition to production of processed beef, Australia is also a significant producer of live cattle for export. Around 720,000 live cattle were exported from Australia in 2009-10.

21. Producers in the north of Australia, stretching from North Western WA though to central Queensland primarily produce cattle for live export. Cattle raised in this region tend to be *Bos Indicus* breeds such as Brahman, which are slower to grow but have high resistance to ticks and other tropical parasites and are generally more suited to hotter tropical climates.

22. The southern regions of Australia, stretching from Southern Queensland through to South Australia and the South West of Western Australia produce primarily *Bos Taurus* breeds of cattle. These are usually intended for domestic slaughter and are primarily composed of breeds which are British in origin such as Angus and Hereford. These breeds grow faster than bos indicus breeds but are less suitable for use in Northern Australia.

The beef production process

23. Cattle are bred and raised by farmers on pasture. After an initial period, younger and lighter cattle, referred to as feeder cattle, may be sold to feedlots for further fattening on grain or retained by the farmer for fattening on pasture prior to being transferred to an abattoir for slaughter. In northern Australia, cattle are usually exported as lighter cattle, with further fattening to occur in feedlots in the destination market before slaughter.

24. Alternatively, farmers may sell feeder cattle to other farmers seeking to take advantage of market conditions (backgrounders) or farmers seeking to rebuild their herd after a drought or in response to exceptional conditions (restockers).

25. Figure 1 shows the typical options for a particular animal before processing. The decision of whether to send an animal to a feedlot depends on many factors, including the amount of grass feed available, the price of feeder cattle being offered and the price premium offered for grain fed cattle.

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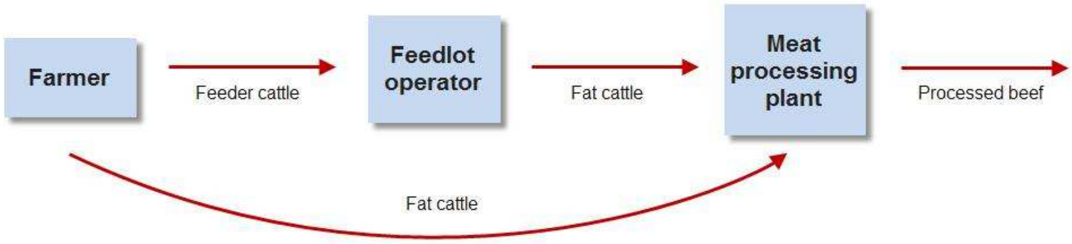
[2] ABARES, Australian Commodity Statistics (beef and veal outlook), June 2011

Figure 1 – simplified cattle production flow process



26. Lot feeding is an intensive production system designed to fatten cattle prior to slaughter on grain-based feed. A feedlot is a confined yard area with watering and feeding facilities where cattle are completely hand or mechanically fed.[3]

27. Lot feeding can occur for any desired period depending on the weight of fat cattle demanded in the market. This usually can be anything from 100 days for short fed cattle for the domestic market to over 300 days for long fed export cattle (primarily for the Japanese market).

28. Currently, the industry has the capacity to lot feed over 1.3 million cattle at any one time while there are currently around 780,000 cattle being lot fed for the March 2011 quarter. 2.53 million grain-fed cattle were sold in 2010. Over 80 per cent of Australia's feedlot capacity is currently in NSW and Queensland.[4]

Acquisition markets for cattle

29. For sale as either prime feeder cattle or prime fat cattle, animals are classed by age, gender and grade (muscle and fat scores) with each grade usually considered to be of different quality and suitable for slightly different end uses. For example, high grade beef cuts would usually come from grown steers and heifers while lower grade cuts, mince and processed meats would often come from older cows and bulls. The price achievable for any type of processed beef will affect the sale price of the animal. Hence older cows and bulls will sell for lower prices per kilo than high grade young steers and heifers.

30. The majority of cattle sold in the market are sold as prime cattle (per kilo, either live weight or carcass weight). However, some cattle are also sold as 'store' cattle. Store cattle are sold per head rather than per kilo. The majority of store cattle are either sold to feedlots for fattening or as breeding stock for farmers. Feeder cattle purchased by farmers or feedlots can be either prime cattle purchased per kilo or store cattle purchased per head.

31. Once cattle (either grass fed or grain fed) meet the desired weight specifications and other characteristics for slaughter they are known colloquially as fat cattle. Fat cattle may be purchased by abattoirs for processing or processed by abattoirs on behalf of third parties (who retain ownership of the cattle) under a service kill arrangement.

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[3] CSIRO, *National Guidelines for Beef Cattle Feedlots in Australia (second edition)*, p10
[4] Australian Lot Feeders Association: *ALFA / MLA Feedlot Survey* January – Mar 2011

32. Abattoirs may undertake a number of stages in beef processing including slaughter, hide removal, boning, packaging and freezing or chilling of meat for supply to domestic or export customers.

33. Fat cattle are directed to either the export or domestic market, depending on the weight and quality of the beast and the prices offered on the market. Animals slaughtered for the purposes of producing export grade beef tend to be significantly larger than those slaughtered for domestic grade beef, although if domestic prices are higher at any given time then these cattle can be sold domestically.[5]

34. Post-slaughter, the beef carcass is processed using either the cold bone or hot bone procedure. The production of cold bone beef requires that the carcass be chilled which allows the meat to 'set' before the carcass is further processed into certain cuts. The cold bone process allows for high quality cuts of beef. Good quality fat cattle are generally processed into cold bone beef.

35. Hot bone beef production involves removing the bones from the beef carcass shortly after slaughter, without first refrigerating the carcass. Hot bone beef is often used to produce mince meat or in the manufacture of processed food. The cattle that are slaughtered in hot bone abattoirs are typically of a poorer quality (e.g. bulls, cows and manufacturing (low grade) steers) than those that are slaughtered in a cold bone abattoir. The main difference between hot bone and cold bone abattoirs is the additional refrigeration that is needed for cold bone meat production.

36. Of the beef abattoirs that operate in Australia, most produce cold bone beef while a smaller number produce hot bone beef. Some abattoirs produce both cold bone and hot bone beef products. The merger parties are both cold bone beef processors.

Methods of sale

37. Fat cattle are usually sold in one of three ways.

    a. The first and least common method is for cattle to be sold directly from the paddock, where a buyer, who is either an employee of the abattoir or a commissioned agent, will visit a producer's property and select stock for purchase at a price agreed on the day.

    b. The second method is for an abattoir to contract with a farmer for the delivery of cattle direct to the abattoir. Prices to be paid are set when the contract for sale is agreed according to the abattoir's 'price grid' which outlines the full prices paid for different grade stock and any penalties for bruising or other damage. This method is referred to as 'over the hooks'. Many large producers prefer this method of sale as it ensures a consistent supply of cattle, transport damage is minimised and usually commission does

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[5] Export grade beef may be acquired by beef wholesalers and retailers in the domestic market, and will not necessarily be exported.

not need to be paid to selling agents, minimising costs for both producers and abattoirs.

c. The final method of sale is for a producer to take their stock to a saleyard, where the cattle are sold at a public auction. Saleyards are preferred by smaller operators as they do not need to ensure they have a full truck worth of stock to transport (minimising transport costs). In addition, during times of low cattle numbers saleyard prices tend to be higher than over the hooks or paddock prices.

Areas of overlap and market definition

38. The ACCC considered the proposed merger in the context of the following relevant markets:

  a. markets for the acquisition of fat cattle in the northern NSW/southern Queensland region and the eastern South Australia, Victoria and southern/central NSW region;

  b. the market for the supply of processed beef on Australia’s eastern seaboard; and

  c. markets for the acquisition of feeder cattle. For the purposes of the competition analysis, the ACCC did not consider it necessary to define the precise geographic scope of the markets for the acquisition of feeder cattle.

Markets for the acquisition of fat cattle

Product Dimension

39. There are several classes of beef cattle, with classes distinguished by grade, age and gender, with each particular class usually commanding a differing price in the market depending on its perceived quality and demand for beef from cattle of that type.

40. Generally, heavy young steers and heifers, grown steers and heifers, cows and bulls are considered ‘fat’ cattle ready for slaughter. Fat cattle can be sorted into different slaughter categories based on whether they are fed on grain or grass, the length of time that they spend on grain (to the extent that they are grain fed) and the weight of the finished beast. Grass fed and smaller grain fed cattle are mostly directed towards the domestic beef market while larger grain fed cattle are usually slaughtered for export.

41. Not all abattoir facilities are capable of handling all cattle types. Abattoirs are required to pass an accreditation process before they are able to export beef. In addition, not all abattoirs are suited to slaughtering the larger cattle usually directed towards export markets. Export accredited facilities that are capable of slaughtering larger beasts are generally capable of slaughtering all cattle types. Abattoirs that slaughter smaller beasts face some difficulties in slaughtering

larger beasts, as their facilities and equipment may need to be upgraded to handle the extra weight and bulk of the heavier beasts.

42. Abattoirs that slaughter smaller beasts may represent a substitute buyer for heavier fat cattle producers, who may be able to sell fat cattle earlier at a lighter weight to domestic abattoir facilities in response to a small but significant and non transitory decrease in the price (SSNDP) of heavier fat cattle. On this basis, the ACCC considered that the acquisition of fat cattle by export-accredited facilities and the acquisition of fat cattle by domestic facilities should be considered as part of the same market. Nevertheless, it was noted that domestic facilities set up to slaughter lighter fat cattle are not as close a substitute for export-accredited facilities for acquiring heavier cattle as they are for lighter beasts.

43. In regard to substitution between fat and feeder cattle, the ACCC found that feeder cattle have different physical attributes in that they still need to be fattened over a period of time before they are ready for slaughter. Fat cattle are acquired by abattoirs whereas feeder cattle are predominantly acquired by feedlots or other farmers. Accordingly the ACCC considered that fat and feeder cattle are at most weak substitutes, such that they form distinct product markets.

44. As discussed in paragraph 37, cattle are generally sold through either of three methods: direct from the paddock; over the hooks; or through a saleyard. Paddock sales and over the hooks are generally considered direct contract sales while saleyards are auction sales. The ACCC found that it was common for cattle producers to switch between these methods of sale in response to a small change in relative prices. Accordingly the ACCC considered that the acquisition of fat cattle by direct contract and from saleyards were part of the same market.

Geographic Dimension

45. The ACCC considered the following separate geographic markets for fat cattle:

    a. the market for the acquisition of fat cattle in northern NSW/southern Queensland (**northern market**); and

    b. the market for the acquisition of fat cattle in eastern South Australia, Victoria and southern/central NSW (**southern market**).

46. The ACCC found that the geographic scope of fat cattle acquisition markets is restricted by a number of factors, most notably the cost of transporting cattle over long distances and the damage and stress that extended road travel can have on cattle. The ACCC considered that movement of fat cattle between northern and southern markets was not substantial, and largely occurred in response to seasonal variances in demand. As it is unlikely that a significant proportion of fat cattle producers would switch between the northern and southern markets in response to a SSNDP for fat cattle, the ACCC considered that these constituted separate geographic markets.

Market for the supply of processed beef

47. The ACCC considered that there is a market for the supply of processed beef on Australia's eastern seaboard. Market inquiries indicated that processed beef may be transported from the eastern seaboard for sale in WA in some circumstances. However, the ACCC's conclusions regarding the likely effect of the proposed merger on the supply of processed beef would remain unchanged if a broader market definition were adopted.

Market(s) for the acquisition of feeder cattle

48. As discussed in paragraph 43, the ACCC considers that fat cattle and feeder cattle form separate markets.

49. There is little or no geographic overlap between Teys and Cargill in the acquisition of feeder cattle as Cargill's only feedlot at Stockinbingal NSW is more than 1000 kilometres from Teys' only feedlot in the Southern Darling Downs region of Queensland. The ACCC found that cattle movements rarely occur over such distances, unless there is a strong price incentive. The ACCC's inquiries indicated that competition between the merger parties for the acquisition of feeder cattle is likely to occur only on a seasonal basis, and primarily in the central NSW region, sometimes extending into northern Victoria. However, for the purposes of the competition analysis, the ACCC did not consider it necessary to define the precise geographic scope of the market(s) for the acquisition of feeder cattle.

With/without test

50. 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' position) to the likely competitive environment if the transaction does not proceed (the 'without' or 'counterfactual' position).

51. The ACCC considered that in the absence of the proposed merger Teys and Cargill were likely to continue to operate independently. On this basis, the ACCC considered that the likely future state of competition without the proposed merger would be similar to the state of competition prevailing at the time of the proposed merger and assessed the matter on this basis.

Competition analysis

Markets for the acquisition of fat cattle – unilateral effects

52. Although their operations are geographically separated, the merger parties do overlap to some extent in the acquisition of fat cattle in both the northern and southern fat cattle acquisition markets.

53. The ACCC examined whether the proposed merger, by removing the constraint which the merger parties currently impose on each other, may enable the merged

entity to significantly and sustainably decrease the price it pays to acquire fat cattle or otherwise exercise market power in either the northern or southern markets.

Competition from other abattoirs

54. In regions where both Teys and Cargill currently compete for the acquisition of fat cattle, the ACCC found that the merged entity will continue to compete with a number of large export-accredited abattoirs.

55. In the northern market, competitors identified through market inquiries that currently compete with both Teys and Cargill include JBS Swift, Nippon, Australian Country Choice and Kilcoy Pastoral Company along with a large number of smaller abattoirs.

56. In the southern market, competitors identified include JBS Swift, Nippon, Hardwicks and MC Herd. As with the northern market, there are also a large number of smaller abattoirs competing in this market.

57. The ACCC considered that existing competitors within the northern and southern markets would be likely to constrain the merged entity from decreasing fat cattle prices, or otherwise exercising market power, post-merger.

58. In forming this view, the ACCC had specific regard to the extent to which the merger parties currently compete to acquire fat cattle both through direct contract sales and auction sales. The ACCC found that there are relatively few saleyards from which Teys and Cargill both acquire fat cattle, and that at these saleyards, Teys and Cargill do not account for a significant proportion of fat cattle purchases.

59. In relation to the acquisition of fat cattle by direct contract sales, market inquiries indicated that cattle producers typically seek price grids from several abattoirs that compete with the merger parties to purchase fat cattle by this method. It was noted that the merged entity would additionally be constrained from decreasing grid prices as cattle producers may choose to sell fat cattle at saleyards instead. However, market inquiries indicated that saleyard purchases may be a less attractive option for abattoirs given the damage and stress to cattle that may be caused by transporting cattle to and from the saleyard.

60. The ACCC found that cattle sales in various regions can be influenced by seasonal impacts. In the summer months, northern market buyers may travel south to acquire fat cattle as there are limited stocks of cattle in Queensland during the wet season. Conversely, in the winter months, buyers may travel north to acquire fat cattle as there are limited stocks of cattle in Victoria in the snow season. The ACCC found that due to the limits of transporting fat cattle over long distances and the distance between Teys and Cargill's abattoirs, competition between Teys and Cargill primarily occurs on a seasonal basis.

Other factors

61. The ACCC found that barriers to entry in the meat processing industry were significant.

62. Inquiries indicated that there are significant sunk costs involved in establishing new abattoir facilities (particularly large export accredited facilities), with market participants indicating the capital cost of a new meat processing facility would range from $50-$100 million for a 500 head per day processing plant (a plant roughly the size of Teys' Naracoorte abattoir), while compliance with planning and environmental legislation can also be expensive and take long periods of time to complete.

63. Furthermore, market inquiries indicated that there is considerable excess capacity in the meat processing industry which may also act as a barrier to entry.

64. Although the possibility of a new entrant in the short term is low, the ACCC considers that a sustained attempt by the merged entity, whether unilaterally or in coordination with other parties, to depress prices for fat cattle, may result in expansion by existing competitors with excess capacity.

65. The ACCC also found that many cattle producers have the ability to resist attempts by the merged entity to depress prices for fat cattle by selling cattle through alternative saleyards outside of the catchment areas of the merged entity. If producers utilise this ability it effectively increases the number of abattoirs directly competing with the merged entity for the purchase of fat cattle.

66. Further, the ACCC found that a number of cattle producers ultimately have the capacity to leave the fat cattle production market in response to a sustained decrease in fat cattle prices by switching production to alternative goods. The ACCC found that some producers who already produce other livestock (e.g. sheep) have the ability to shift their production with minimal switching costs in response to a sustained decrease in the price of fat cattle.

Conclusion – unilateral effects

67. The ACCC considered that the merged entity is unlikely to be able to depress prices for fat cattle in either the northern or southern markets post-merger for the following reasons:

    a. there is limited geographic overlap between the merger parties and competition between them primarily occurs on a seasonal basis;

    b. several competing abattoirs are likely to continue to constrain the merged entity;

    c. existing capacity of abattoirs is largely under-utilised such that competing abattoirs would have the capacity to increase their production in response to an exercise of market power by the merged entity; and

d. cattle producers may bypass the merged entity by selling cattle at different locations or by switching production to other goods.

Markets for the acquisition of fat cattle - coordinated effects

68. The ACCC also examined whether the proposed merger would increase the likelihood of firms engaging in coordinated conduct in markets for the acquisition of fat cattle.

69. The ACCC found that there are features of fat cattle acquisition markets that may tend to make coordination more feasible than in some other markets, for example:

    a. there is transparent pricing, with cattle grid prices published regularly and with Meat and Livestock Australia collating and publishing spot pricing information;

    b. market participants have repeated interactions at saleyard auctions;

    c. firms compete against each other in more than one market, with processors competing in fat cattle acquisition markets as well as the market for the supply of processed beef;

    d. barriers to entry for meat processing are high; and

    e. the product is broadly homogenous as beef is generally considered a commodity product. However, there are a large number of grades/quality levels within processed beef which are near (but not perfect) substitutes and hence the cattle from which this beef is sourced are also near rather than perfect substitutes.

70. However, the ACCC notes that the above conditions are present with or without the proposed merger, and the ACCC considers that the number of abattoirs continuing to compete in the market post-merger would make it difficult to organise and maintain coordinated conduct between the remaining firms. In addition, the presence of excess capacity in the industry provides firms with the incentive and ability to deviate from a coordinated price.

71. In acquisition markets where the merger parties compete, market inquiries indicated that the merger parties do not always compete for the same cattle types and that, as indicated above, there is a strong seasonal element to the level of competition. The ACCC considers that potential seasonal acquisitions of fat cattle by abattoirs outside the market and the threat of expansion or entry sponsored by cattle producers may also disrupt efforts by the remaining firms to engage in coordinated conduct.

Conclusion – coordinated effects

72. The ACCC considers that the proposed merger is unlikely to result in a substantial lessening of competition in the northern or southern markets for the acquisition of fat cattle due to coordinated effects.

Market for the supply of processed beef

73. At present, nearly 50 per cent of Australian beef production is exported. As there are no barriers preventing export producers selling product on the domestic market, domestic beef producers would in effect also compete with export markets should domestic prices rise due to a restriction in domestic competition.

74. The merged entity will continue to be constrained post-merger by the presence of existing competitors in the domestic market for the supply of processed beef including Australian Country Choice, Nippon Meat Packers, Churchill Abattoir, Northern Cooperative, Ramsey Meats and a number of other smaller abattoirs.

75. The ACCC considers that the proposed merger is unlikely to substantially lessen competition in the market for the supply of processed beef on Australia's eastern seaboard due to the large number of competitors supplying processed beef and the countervailing power of large customers who have the ability to bypass the merged entity by processing their own cattle through service kill contracts with competing abattoirs. The ACCC's conclusion in this regard would remain unchanged if a national market for the supply of processed beef were considered.

Market(s) for the acquisition of feeder cattle

76. The ACCC considered whether the proposed merger may enable the merged entity to significantly and sustainably decrease the price it paid to acquire feeder cattle or otherwise exercise market power with respect to the acquisition of feeder cattle.

77. As noted at paragraph 49 above, there is only very limited overlap between the merger parties in the acquisition of feeder cattle, with their feedlots located more than 1000 kilometres apart. Market inquiries undertaken by the ACCC indicated that cattle movements rarely occur over such distances due to the high transport costs involved, unless there is a strong price incentive. These price incentives may occur for seasonal reasons, for example, if there is a shortage of feeder cattle available in Queensland in the summer months, buyers may be willing to travel further south to acquire feeder cattle. Market inquiries indicated that any competition between the merger parties for the acquisition of feeder cattle would only be likely to occur on a seasonal basis.

78. Neither of the merger parties is a significant operator of feedlots, with combined feedlot capacity of the merger parties representing only a small proportion of the national feedlot industry.

79. The ACCC notes that there is significant excess capacity within the feedlot industry and market inquiries indicate that there is 'swing' capacity in the industry, with a number of smaller feedlots operating only at times of peak demand. Post-merger, the merged entity is likely to be constrained by a large number of feedlots that compete to acquire feeder cattle in central NSW and Victoria.

80. As there is very limited geographical overlap between the merger parties for the acquisition of feeder cattle and neither merger party is a significant feedlot operator, the ACCC does not consider that the proposed merger is likely to substantially lessen competition in the acquisition of feeder cattle.

81. The ACCC also considered that the merged entity would be unlikely to have the ability or incentive to foreclose competing feedlots' access to the merger parties' abattoirs given that the merger parties' feedlots are unlikely to supply sufficient numbers of fat cattle to the merged entities' processing plants, and the presence of several other abattoirs in the relevant markets to which feedlots could supply fat cattle.

Potential foreclosure of competing feedlots' access to grain

82. The ACCC considered whether the proposed merger, by increasing the number of feedlots owned by Cargill, may increase Cargill's ability or incentive to foreclose competing feedlots' access to grain.

83. Teys' feedlot has a capacity of 30,000 head per annum. Although the proposed merger will increase Cargill's feedlot capacity, the ACCC considered that the size of this increase would be unlikely to give Cargill the ability and incentive to foreclose competing feedlots' access to grain because the merged entity's feedlots would be unlikely to constitute a sufficient customer base for Cargill's grain supply business. In addition, there are several alternative grain suppliers from which competing feedlots could acquire grain if Cargill attempted to engage in foreclosure strategies.

Conclusion

84. On the basis of the above, the ACCC formed the view that the proposed merger of the beef processing operations of Teys and Cargill would not be likely to result in a substantial lessening of competition in any relevant market in contravention of section 50 of the Act.