



Australian
Competition &
Consumer
Commission

23 February 2012

Statement of Issues — Amcor Limited's proposed acquisition of Aperio Group Pty Limited

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition of Aperio Group Pty Limited (**Aperio**) by Amcor Limited (**Amcor**) (**proposed acquisition**).
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 **8 March 2012** and anticipates making a final decision by **29 March 2012**. 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 14 November 2011, the ACCC commenced a public review of the proposed acquisition after receiving a submission from Amcor seeking clearance from the ACCC for the proposed acquisition.

The merger parties

The acquirer - Amcor

6. Amcor's Flexibles Asia Pacific operating division produces a range of flexible packaging solutions. Amcor Flexibles Asia Pacific has 20 manufacturing operations in seven countries. In Australia, Amcor currently operates four flexible packaging manufacturing plants in Moorabbin and Preston (Victoria), Acacia Ridge (Qld), and Regents Park (NSW). Amcor manufactures and supplies a wide range of flexible packaging products to customers for food, beverage and other end use applications. It appears that Amcor is the largest supplier of flexible packaging in Australia (in terms of market share).

The target - Aperio

7. Aperio is a privately owned manufacturer of flexible packaging products. Aperio currently operates 12 manufacturing facilities across Australia and New Zealand, as well as a further flexible packaging manufacturing plant in Thailand. Aperio was established in 2005 when Catalyst acquired the Australasian packaging business of AEP Industries. Since 2005, Aperio has acquired other smaller flexible packaging suppliers including FPS International, Dynathene, Epic Packaging, Finewrap Group and Packsys. It appears that Aperio is among the three largest suppliers of flexible packaging in Australia (in terms of market share).

Other industry participants

Detmold

8. Detmold Packaging is a privately owned Australian company that operates in a diverse range of packaging markets in Australia and overseas. The Detmold Consumer Goods Division (**Detmold CGP**) operates solely in Australia and competes directly with the merger parties. Detmold CGP has two production sites in Melbourne. Detmold CGP recently invested in new capital equipment and is now capable of supplying products to meet customer needs in snack foods, frozen foods, biscuits, breakfast cereal, ice cream, confectionary, pasta, coffee and other FMCG related applications.

Integrated Packaging

9. Integrated Packaging Pty Limited (**Integrated Packaging**) is a privately owned company and a large specialist manufacturer and distributor of stretch and shrink film wrap, mainly for use in industrial, agricultural and horticultural end-use categories. Integrated Packaging has four production sites in Australia and New Zealand.

Sealed Air

10. Sealed Air Australia (Holdings) Pty Ltd (**Sealed Air**) is a subsidiary of Sealed Air Corporation, a large U.S. based firm which generated revenue of \$7.6 billion in 2010 and serves customers in 175 countries. Sealed Air's operations in Australia include its Cryovac business. In relation to flexible packaging, Sealed Air appears to largely specialise in packaging for meats and other fresh foods.
11. Other industry participants include local manufacturers such as Andrew Kohn, Apex Films, Perfection Packaging and Pope Packaging, and overseas manufacturers such as Daibochi, Huhtamaki, Jiapu and Nordenia.

Areas of overlap

12. The ACCC has identified the following areas of overlap between the merger parties:
 - supply of plain flexible packaging; and
 - supply of printed, laminated and converted flexible packaging (collectively, **value-added flexible packaging**).

Market inquiries

13. On 14 November 2011, the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including other suppliers and customers.

With/without test

14. Section 50 of the *Competition and Consumer Act 2010 (CCA)* prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the CCA, the ACCC considers the likely effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the “with” position) to the likely future competitive environment if the acquisition does not proceed (the “without” position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.
15. For the purposes of this Statement of Issues, the ACCC will at this stage assess the proposed acquisition against the status quo. Aperio has recently been the subject of a sale process. In the event that Amcor does not acquire Aperio, the current owners may retain the business and continue with their strategic plans or the business may be sold to another party.

Market definition

16. For the purposes of this Statement of Issues, the ACCC's preliminary view is that the relevant market in which to consider the likely competition effects of the proposed acquisition is the national market for supply of flexible packaging.

Flexible packaging

Product dimension - plain, printed, laminated and converted flexible packaging

17. Flexible packaging is supplied in a wide variety of forms including, for example, plain shrink film, printed polyethylene film and printed laminated rewind. Flexible packaging is used in a wide variety of industries including food, beverages, pharmaceuticals, chemicals, construction and agriculture.
18. Plain film, such as shrink film used to wrap around heavy pallets for transport, is generally a commodity product. In contrast, printed flexible packaging is decorated to suit specific customers and lamination involves bonding layers of materials with an adhesive or resin to achieve product characteristics tailored to suit specific customers. These printing and laminating processes are directed at achieving particular physical packaging attributes such as aesthetic or print surface qualities (or, in other words, the product's 'look and feel') and functional packaging attributes such as barrier characteristics, seal strength or 'peelability', and impact and puncture resistance. Specific examples of such flexible packaging may include potato crisp packets, chocolate wrappers, biscuit packets, cheese block wrap, beer packs, as well as packaging for frozen vegetables, nappies and toilet paper.
19. Most flexible packaging is supplied on reels to be used within customers' packing processes. Other flexible packaging is 'converted' for supply to customers as bags or pouches. Specific examples of such converted flexible packaging include stand-up pouches (for example, for pet foods), polyethylene sacks (for example, for potting mix) and wicketed bags (for example, for bread).
20. Demand for plain and value-added flexible packaging predominantly arises from the fast moving consumer goods (FMCG) sector, including but not limited to food and beverage manufacturers. Supply of value-added flexible packaging to this FMCG packaging customer base appears to represent the principal area of overlap between the current operations of the merger parties and is therefore particularly relevant to the ACCC's assessment of the proposed acquisition.

21. FMCG packaging customers typically acquire high volumes of decorated and customised packaging for branded and mass-marketed consumer products sold through grocery channels, often involving large numbers of stock-keeping units (**SKUs**). Relevant end-use product categories for flexible packaging currently or potentially supplied by Amcor and Aperio include beverages, biscuits, cereals, confectionery, dairy products, frozen foods, nappies, pet foods, salty snack foods and toilet paper. Lead times, security of supply, quality and compliance with food safety standards or other recognised manufacturing standards (for example, Hazard Analysis and Critical Control Points (**HACCP**) accreditation), as well as pricing, are generally important aspects of demand by FMCG packaging customers for flexible packaging.
22. While other forms of packaging such as plastic cans, metal cans and folding cartons are utilised for packaging certain product lines or SKUs among some of the end-use product categories identified above, market inquiries indicate that such alternative forms of packaging are often complementary rather than substitutable. The ACCC therefore considers that there is likely to be discrete demand by customers for flexible packaging products.
23. It appears that the first stage of manufacturing flexible packaging products generally utilises some common equipment and processes, typically blown film extrusion. The ACCC's main focus in relation to defining the boundaries of the relevant market/s is to assess the extent to which there are any significant discontinuities in substitution between manufacture and supply of different types of flexible packaging – plain and value-added flexible packaging - with the latter being relatively differentiated and complex to produce, in terms of the various products' technical characteristics and extent of production changeovers. Manufacture of value-added flexible packaging therefore appears to require greater expertise and additional equipment, and its supply to FMCG customers appears to involve closer relationships with customers and greater investment in customer support. The ACCC is therefore seeking comments on the potential for an existing manufacturer of plain flexible packaging to expand into manufacture of value-added flexible packaging, particularly for supply to FMCG packaging customers.
24. This is particularly relevant to the ACCC's assessment of the competition the merged firm would likely face from Integrated Packaging, which currently supplies plain flexible packaging on a large scale but does not, for example, manufacture highly decorated flexible packaging. The ACCC will similarly be considering the potential for Sealed Air to expand its range of flexible packaging, which currently appears focussed on fresh food applications, to compete against the merged firm for supply of highly decorated and laminated flexible packaging to FMCG packaging customers. The ACCC will consider these issues in the context of the merged firm attempting to impose an increase in price. Factors informing the ACCC's assessment will include costs and lead times associated with additional capital investment in equipment, marketing and customer relationship management.

Geographic dimension

25. Manufacturers and importers typically produce or warehouse flexible packaging at one or more Australian sites, from which they generally distribute nationally. Large contracts are typically negotiated on a national basis.

Preliminary conclusion – relevant market

26. The ACCC's preliminary view is therefore that the relevant market for assessing the proposed acquisition may be the national market for supply of flexible packaging, encompassing plain, printed, laminated and converted flexible packaging, but the ACCC has not reached a definitive view in relation to market definition at this stage. While the ACCC's review is directed at the potential competition effects of the proposed acquisition across the full range of flexible packaging supply, the ACCC is currently particularly focussed on how supply of value-added flexible packaging to large FMCG packaging customers may be affected by the proposed acquisition.

Statement of issues

27. For the purposes of this Statement of Issues, the ACCC has identified the supply of flexible packaging as an issue that 'may raise concerns'.

Issues that may raise concerns

Supply of flexible packaging

28. In light of the ACCC's market-place inquiries to date, the ACCC at this stage considers that the proposed acquisition may substantially lessen competition for the supply of flexible packaging products in Australia. The merger parties have submitted to the ACCC that there is limited overlap between their respective operations, in terms of products supplied, and that the proposed acquisition would not result in significant market concentration. However, the ACCC considers that the proposed acquisition would remove Amcor's main competitor for supply of flexible packaging products in Australia.
29. Amcor and Aperio are currently two of the three largest market participants. The ACCC's market enquiries suggest that the merged firm would account for in excess of 30 per cent of Australian sales of flexible packaging. Also, the merged firm would account for approximately twice the sales volumes of the next largest market participant, Sealed Air.
30. Moreover, Amcor and Aperio also appear to be each others' closest competitors in the flexible packaging market, in terms of product range, local manufacturing presence and local service and support. Both focus their supply of flexible packaging towards FMCG packaging customers. Some FMCG packaging customers have identified to the ACCC how they trade Amcor and Aperio off against each other and have secured price reductions as a result.

31. Consistent with this information from customers, the ACCC's review to date suggests that there is extensive overlap between the merger parties across many significant market segments. For example, the merged firm would account for approximately 95 per cent of flexible packaging sold in Australia for both frozen food applications and personal and baby care applications. The merger parties are also both very significant actual and potential suppliers of flexible packaging sold in Australia for biscuit, bread, cereal, confectionery, ice cream and snack food applications.
32. Some large-volume FMCG packaging customers of Amcor and/or Aperio have raised concerns with the ACCC that the proposed acquisition would result in insufficient choice of suppliers. Looking beyond the immediate removal of Aperio from the market, the ACCC is assessing the extent to which the proposed acquisition would allow the merged firm to increase prices or reduce service and innovation.
33. Factors to which the ACCC will have particular regard in considering the likely competition effects of the proposed acquisition are potential new entry or expansion by existing domestic manufacturers, the actual and potential role of import competition, the extent to which customers could exercise countervailing power, and customer switching costs. These factors, about which the ACCC has to date received quite conflicting information, are discussed in turn below. The ACCC's review will be especially informed by examples or objective evidence, including internal documents of suppliers or customers where possible, of the practical operation of these potential competitive constraints.

Alternative domestic manufacturers - entry and expansion

34. In the ACCC's preliminary view, other local manufacturers of flexible packaging predominantly occupy market niches or currently operate on a relatively small scale. The ACCC is therefore concerned that they may not provide sufficient competitive constraints on the merged firm.
35. The next largest market participant, Sealed Air, does not appear to currently compete in Australia against the merger parties in relation to many of the flexible packaging products for which there is very extensive overlap between the merger parties. Sealed Air appears to largely focus its supply of flexible packaging on meat and fresh food applications. While the ACCC has received some information indicating that Amcor or Aperio have bid against Sealed Air for certain business, in the ACCC's market inquiries to date Sealed Air has not featured as a significant current competitor to the merger parties.
36. In relation to Integrated Packaging, the ACCC understands that it specialises in shrink film and other plain flexible packaging that is mainly supplied to the logistics, agriculture, and horticulture industries. Accordingly, it appears that Integrated Packaging may only provide a limited competitive constraint on the merged firm.

37. The ACCC is therefore concerned that the threat of losing sales to Sealed Air or Integrated Packaging may not be sufficient to prevent the merged firm from increasing prices. The ACCC is interested to receive further information about custom won/lost between the mergers parties and Sealed Air or Integrated Packaging. The ACCC is particularly interested in the ability of these existing market participants to expand their operations into supply of different forms of flexible packaging, the potential role of large FMCG packaging customers in sponsoring or supporting such expansion, and the credibility of the threat to the merged firm of such potential competition from Sealed Air and Integrated Packaging.
38. The merger parties have submitted to the ACCC that other domestic manufacturers such as Detmold CGP and Andrew Kohn would also represent significant actual and potential competition to the merged firm. Submissions to the ACCC suggest that Detmold CGP and Andrew Kohn have invested significantly in recent years and supply some large FMCG packaging customers. Also, for example, Detmold CGP has flexographic and gravure printing capacity, equipment to manufacture cold-seal flexible packaging, and has HACCP accreditation. It has been submitted to the ACCC that Detmold CGP is in a strong position to be the number two provider of flexible packaging in Australia, post-acquisition. However, Detmold CGP's manufacturing scale and market share would be very small in comparison to the merged firm.
39. The ACCC's market inquiries to date have identified that some large FMCG packaging customers do not regard smaller-scale manufacturers as credible alternatives for high-volume supply across the range of flexible packaging products they require. Smaller-scale local manufacturers generally have limited capabilities in terms of production capacity, breadth of product line, customer support and ongoing innovation or product development.
40. Flexible packaging is a relatively small-value input whose reliable supply, in terms of quality control and timely delivery, is critical to the production and marketing processes of FMCG packaging customers. These customers typically consider that smaller-scale flexible packaging manufacturers do not have the physical capacity or sufficiently flexible production profile to ensure appropriate security of supply. For example, some customers expect a supplier to have multiple domestic manufacturing sites for specific products in order to have contingency arrangements in the event of a supply disruption.
41. However, it is apparent that these smaller domestic manufacturers actively tender for some FMCG contracts and that some large FMCG packaging customers source significant volumes of flexible packaging from smaller-scale domestic manufacturers. In particular, it has been submitted to the ACCC by the merger parties that FMCG packaging customers can and do utilise a dual-sourcing strategy in which only part of their demand is allocated to a smaller domestic manufacturer. Such dual-sourcing may serve as a significant competitive discipline on the merged firm.

42. The ACCC is seeking further information about the role in the market of these smaller players and their ability to service large FMCG packaging customers. In particular, the ACCC is interested to understand the extent of custom that the merged firm would have to lose to other domestic manufacturers to defeat an attempted price increase by the merged firm, and the ability of other domestic manufacturers to supply such volumes.

The ACCC invites comments from interested parties on the competitive constraint likely to be imposed on the merged firm by alternative domestic manufacturers

The ACCC seeks further information on the role of alternative domestic manufacturers of flexible packaging, with particular reference to supply of value-added flexible packaging to FMCG packaging customers, including:

- their tendering activity, including relevant customers, products, volumes, dates and why the tender was successful or unsuccessful;
- the products they supply and their contract volumes, and the proportion of total tenders / supply opportunities for which alternative domestic manufacturers are a competitive constraint;
- their compliance with recognised manufacturing standards (for example, HACCP, British Retail Consortium standards, or other accreditations) or other quality control measures, and their contingency measures in the event of supply interruptions;
- their production profiles, in terms of sites, equipment and excess capacity;
- the types of products they could potentially supply, without significant new investment or lead times;
- the preparedness of FMCG packaging customers to test supply from smaller scale domestic flexible packaging suppliers, including as part of a dual-sourcing strategy, and the factors they will consider in this regard; and
- the investment and lead times associated with an existing domestic manufacturer significantly expanding their product range and manufacturing capacity (for example, introducing or adding printing, laminating, wicketing and/or cold-seal technology), and the potential role of customer sponsorship of such investment and expansion.

43. The ACCC is also assessing the likelihood that a new entrant would commence manufacture and supply of flexible packaging in Australia in the event that the merged firm sought to increase prices or reduce service, and the potential for customer sponsorship of such new entry. Many of the factors discussed above are also relevant to the likelihood of new entry.

The ACCC invites comments from interested parties on the likelihood of entry into the supply of flexible packaging

The ACCC seeks further detailed information on the likelihood of other parties commencing supply of flexible packaging. In addition to the information already described above, the ACCC is interested in information regarding:

- existing excess capacity among domestic manufacturers, which may represent a strategic barrier to entry;
- growth or decline in market size;
- the manufacturing scale and product range which would be required to provide effective competition to the merged firm;
- nature and amounts of costs, as well as lead times, to commence supply; and
- whether any other companies have expressed a willingness to supply, or an interest in supplying, flexible packaging.

Actual and potential import competition

44. Some large FMCG packaging customers submitted to the ACCC that imports provide only a weak source of competitive constraint on domestic supply. However, it has also been submitted to the ACCC that some customers merely prefer the status quo in which it is convenient to utilise a local manufacturer/s for supply of flexible packaging, rather than it being unviable or impractical for customers to switch to imports. It has been further submitted to the ACCC that imports of flexible packaging account for more than 30 per cent of the Australian market (including imports by the merger parties), and that flexible packaging prices in Australia have been declining in real terms. Nonetheless, the ACCC is concerned at this stage that the threat to the merged firm of losing sales to imports may only impact on a portion of its sales and may not therefore be sufficient to constrain the merged firm from an attempted price increase.
45. Customers and suppliers generally observed that imports of flexible packaging have gained market share in recent years in the context of the higher Australian dollar, and that imported flexible packaging can be substantially cheaper than Australian supply due to lower overseas labour and raw material costs. The ACCC's review to date suggests that some imported flexible packaging products can be 10 – 60 per cent cheaper than local supply.

46. It therefore appears that large FMCG packaging customers generally pay a significant premium, compared to prices available from overseas manufacturers, for the benefits of supply from a local manufacturer. Imports of flexible packaging for supply to FMCG packaging customers may generally be limited to end-use products for which consumer demand is relatively consistent and predictable, packaging designs are amended relatively infrequently and/or SKU numbers are relatively limited.
47. FMCG packaging customers generally amend packaging graphics frequently and for many SKUs. FMCG manufacturers commit to change-over dates with their grocery customers and must coordinate their packaging requirements with booking TV advertising and other mass marketing. As a consequence, there is a very significant service dimension to supply of printed and laminated flexible packaging to FMCG packaging customers.
48. In this context, the main potential limits on import competition appear to be:
- **longer supply chain and lead times compared to locally sourced supply.** Customers emphasised that demand for many of their products can fluctuate significantly over relatively short periods of time. Also, promotional activity, product launches and deletions occur frequently, resulting in new or varied packaging graphics for many other products. Promotional activity is initiated not only by FMCG manufacturers but also by their grocery customers. As such, FMCG manufacturers must be able to react to market developments and opportunities quickly. Some customers appear to expect that importing from Asia would add approximately 3 - 5 weeks to the supply chain, which may significantly impact the ability of FMCG manufacturers to serve their grocery customers, but the ACCC has received information from Amcor suggesting that importing may add only 2 weeks to lead times. Market enquiries suggest air freight is a very high-cost option that would not be used by a customer on a regular basis; and
 - **security of supply.** Some customers expressed concerns that the risks of shipping delays, late delivery or poor quality product are significant given the imperative to maintain consistent production and supply of their FMCGs on grocery shelves. These customers submitted to the ACCC that much of their demand for specific flexible packaging products would be insufficient to receive appropriate priority by large-scale Asian manufacturers, especially in relation to new products or in the event of a supply interruption. In these circumstances, overseas sources of supply cannot match the responsiveness and support provided by local packaging manufacturers. Some customers thus consider that these risks, as well as the higher storage and inventory costs associated with importation, outweigh potential cost savings from overseas manufacturers.

49. Some additional potential difficulties with importing flexible packaging that customers have identified in the ACCC's market inquiries to date include:

- **Australian Packaging Covenant.** This voluntary covenant, which calls for reductions in the volume of packaging used by Australian companies, was raised in the ACCC's market inquiries as a factor that limits the ability of an FMCG packaging customer to import printed flexible packaging. The ACCC understands that Asian flexible packaging manufacturers typically utilise gravure printing which can involve higher gauge material than flexographic printing of some products by Australian manufacturers, and which therefore involves using greater volumes of packaging inputs.

However, it appears that flexographic printing of flexible packaging is available in Asia and also that, for example, gravure printed packaging for toilet paper, tortillas and pastas is imported in significant volumes for supply to Australian FMCG packaging customers (for example, from Great Wall in Malaysia and Positive Packaging in India). Accordingly, the ACCC does not at this stage consider the Australian Packaging Covenant to be a significant limit on import competition; and

- **ability to import cold-seal flexible packaging.** Cold-seal technology allows product packaging to be sealed without heat, such as for temperature-sensitive confectionery and dairy products, and the ACCC received some information in market inquiries that importing cold-seal packaging is not viable or practical due to higher costs for refrigerated transport and shorter shelf-life.

Importing cold-seal packaging to Australia is likely to require refrigerated transport, the cost of which may represent less than approximately 1 per cent of the average sales value of the relevant product and which therefore appears economical in the context of lower unit manufacturing costs for packaging supply from overseas (Asia). Also, the six month shelf-life of cold-seal packaging (from shipping to packaging) appears sufficient to manage importation logistics, although shipping cold-seal packaging involves some risk of product damage. The ACCC understands that cold-seal packaging for confectionery and dairy products is currently imported for supply to some Australian FMCG packaging customers (for example, from Jiapu in China), and is also transported between other international markets. The ACCC has also received submissions that other suppliers have successfully trialled importing cold-seal packaging to Australia and New Zealand.

50. The ACCC notes that Amcor and, to a lesser extent, Aperio, import flexible packaging. Many large Australian FMCG packaging customers source flexible packaging from Amcor or Aperio via these suppliers' overseas manufacturing plants. This sourcing appears to often occur due to demands placed on Amcor or Aperio by customers to satisfy their 'low cost country' (LCC) procurement policies, or as a benchmarking measure by which customers can evaluate the competitiveness of local supply. The ACCC is interested to understand whether customers secure any unique benefits from importing products via one of the merger parties versus sourcing imported products from an overseas manufacturer that is independent of the merger parties.
51. It has been submitted to the ACCC that some overseas manufacturers have warehousing facilities and sales representation in Australia that significantly address the logistics of importing. Relevant overseas manufacturers with an Australian presence are Diabochi (Malaysia), Huhtamaki (Vietnam, India and elsewhere), Jiapu (China), Mayor (China), Nordenia (Malaysia) and Thriving (Taiwan). These overseas manufacturers typically have significant customers such as General Mills, Kraft, Mars, Pepsico and Wrigley and it appears that contracts often worth \$3-5 million have been lost by domestic manufacturers to overseas manufacturers in recent years. However, the ACCC notes that individual importers typically have market shares in Australia of approximately 2% or less. The ACCC is interested to receive further information about customers' experience of importing, and the extent to which these overseas manufacturers can offer account management and technical support to Australian customers.
52. The ACCC understands that current imports of flexible packaging include both 'short-run' and 'long-run' lines. The ACCC is interested to receive further information from customers and suppliers as to whether importing involves relatively lower logistical risks and/or relatively lower costs for long runs or short runs of flexible packaging, and whether imported supply is likely to be an effective competitive constraint in relation to customers' demand for short and long runs of flexible packaging. Further information is also required as to the relevant volumes and/or other factors which distinguish long runs from short runs, and the proportions of packaging demand by customers accounted for by long runs and short runs.
53. The ACCC is also considering the extent to which customers benchmark domestic prices to import prices, such that imports may act as a competitive constraint even in circumstances where a customers does not actually import significant volumes. It appears many customers conduct regional tender processes or benchmarking exercises to test the competitiveness of local supply. It has been submitted to the ACCC that Arnott's, George Weston Foods, Goodman Fielder, Kellogg's, Kimberly-Clark, Kraft, Mars, Nestle, Norco, Pepsico, SCA, Unilever and Wrigley's have benchmarked local supply against imports in some fashion in recent years.

54. The ACCC is seeking further information, preferably with supporting evidence (such as internal documents of customers or suppliers), on the competitive constraint imposed by imports of flexible packaging on domestic supply. The ACCC's review will be especially informed by examples in recent years of customers switching significant parts of their demand from Amcor or Aperio to an independent overseas supplier, or examples of customers utilising tender processes and benchmarking exercises (against imports) to effectively constrain pricing by Amcor or Aperio. Such examples or objective evidence should identify the relevant players, products, volumes and dates.

The ACCC invites comments from interested parties on the competitive constraint likely to be provided by imports of flexible packaging

In addition to the information already described above, the ACCC seeks further information and where possible internal documents regarding:

- where relevant, how customers and suppliers decide which products they will import;
- the nature and amount of costs associated with importing;
- the extent to which imported products have significantly longer lead times than domestically manufactured products and, if so, the impact of longer lead times on a customer's production and marketing processes;
- whether there are quality issues associated with imported products, including recent examples of quality concerns or the basis upon which quality concerns are held;
- the account management and technical support provided by overseas manufacturers to Australian customers;
- examples in recent years of customers switching significant parts of their demand from Amcor or Aperio to an independent overseas supplier, how the logistics and lead times associated with importing have been addressed, and the cost savings or problems customers have experienced in switching to an overseas manufacturer; and
- the extent to which customers seek tenders or quotes from overseas manufacturers, and benchmark domestic prices against overseas prices as part of their procurement process.

Countervailing power

55. The merger parties have submitted to the ACCC that large FMCG packaging customers would have the ability to exercise considerable bargaining power against the merged firm. The merged firm would typically supply between one and three main domestic customers in most end-use product categories, such as for alcoholic beverages, biscuits, bread, cereals, confectionery, frozen foods, nappies, salty snack foods and toilet paper. For example, customers include Arnott's, Carlton United Brewers, General Mills, George Weston Foods, Goodman Fielder, Kellogg's, Kimberly-Clark, Kraft, Lion, Mars, McCain's, Nestle, PepsiCo, Sanitarium, SCA and Simplot.
56. These high-volume customers generally have related companies in overseas markets through which they conduct regional tender processes and/or source raw material cost information or final product pricing, which they can utilise to benchmark alternative sources of supply. They commonly also have professional buyers with relevant technical knowledge in relation to packaging products. As a consequence, these large FMCG packaging customers are typically well-informed in relation to their purchasing of flexible packaging. Large FMCG packaging customers also often have sophisticated procurement practices such as accreditation for potential new suppliers to control quality and security of supply risks, established purchasing policies such as LCC sourcing, and processes for managing supply chain logistics.
57. The ACCC understands that contracts for supply to FMCG packaging customers are typically 2-3 years, allowing customers to regularly benchmark alternative suppliers and potentially switch at least part of their demand to a new supplier. Contracts sometimes include 'meet the market' clauses by which a customer can secure more favourable pricing from an incumbent supplier in the event that the customer finds lower prices from an alternative domestic or overseas supplier. The ACCC is interested to receive further information or objective evidence, such as internal documents of suppliers or customers, identifying the extent to which FMCG packaging customers utilise 'meet the market' clauses and LCC sourcing to constrain pricing for flexible packaging.
58. The ACCC's preliminary view is that any countervailing power of such large FMCG packaging customers, which may provide a further constraint on pricing by the merged firm, would be most likely to arise from a potential for customer sponsorship of investment and expansion by flexible packaging suppliers (such as Sealed Air), or possibly by benchmarking against supply from independent overseas manufacturers. These issues have been discussed earlier in this Statement of Issues.

Customer switching costs

59. The ACCC considers that smaller suppliers, new entrants and imports would only represent credible competitive threats to the merged firm if sufficient demand from customers could readily switch to alternative domestic or overseas sources of supply in order to defeat an attempted price increase by the merged firm. Accordingly, an important further factor in assessing how large FMCG packaging customers may resist such price increases by the merged firm is the costs and lead times for such customers to switch to alternative local and/or overseas suppliers.
60. The practical ability for customers to switch suppliers appears especially relevant to FMCG packaging customers' demand for value-added flexible packaging, given that the graphics and other aesthetic and functional characteristics of these packaging products are customised to suit the branding of specific products and often involve large numbers of SKUs. The costs and lead times associated with switching include auditing manufacturing facilities to ensure quality control (for example, compliance with HACCP or British Retail Consortium standards), product trials and artwork costs for each SKU. Switching to a new supplier for a relatively complex product and for which the supplier must install new capital equipment may take approximately 18 months. However, it has been submitted to the ACCC that customer switching can commonly occur within 3 – 6 months from the completion of tender processes, and that customers can utilise dual-sourcing and switch only part of their demand away from an incumbent supplier. Some overseas manufacturers of flexible packaging will have qualified as approved suppliers to the overseas related companies of Australian customers, which will facilitate switching.
61. Recent examples of short lead times for switching suppliers of flexible packaging appear to include printed or laminated flexible packaging for nappies, pasta and salty snack foods, as well as plain shrink film for pallets of beer and wine bottles. The ACCC is interested to receive further examples and objective information, including internal documents of suppliers or customers, regarding switching costs and lead times and the incidence of customers switching or threatening to switch at least part of their demand to alternative local or overseas sources of supply.

ACCC's future steps

62. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
63. The ACCC now seeks submissions from interested parties 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.

64. Submissions are to be received by the ACCC no later than **8 March 2012**. 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 merger parties, come to a final view.
65. The ACCC intends to publicly announce its final view by **29 March 2012**. 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.