Public Competition Assessment

11 May 2010

Cargill Australia Ltd - proposed acquisition of Goodman Fielder's commercial edible fats and oils business

Introduction

1. On 31 March 2010, the Australian Competition and Consumer Commission (**ACCC**) announced its decision to oppose the proposed acquisition of Goodman Fielder's commercial edible fats and oils business by Cargill Australia Ltd (**proposed acquisition**). The ACCC decided that the proposed acquisition would be likely to have the effect of substantially lessening competition in certain markets for the manufacture and wholesale supply of edible fats and oils products in Australia in contravention of section 50 of the *Trade Practices Act 1974* (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. a merger is opposed;

   b. a merger is subject to enforceable undertakings;

   c. the merger parties seek such disclosure; or

   d. 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 Cargill Australia Ltd’s (Cargill) proposed acquisition of Goodman Fielder's commercial edible fats and oils business (the Goodman Fielder Business) was opposed by the ACCC.

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. Many of the ACCC's decisions will 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. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

The parties

Cargill Australia Ltd

8. Cargill is an international producer and marketer of food, agricultural, financial and industrial products and services. Cargill has operations in 68 countries.

9. Cargill established operations in Australia in 1967, initially to serve the country's large grain export industry. It has since extended its involvement into several other agricultural and industrial areas. These areas include oilseed and meat processing, grain and oilseed storage and flour milling.

10. Cargill's involvement in the edible fats and oils industry in Australia includes:

    a. the operation of three oilseed crushing facilities, which are located at Newcastle (NSW), Narrabri (NSW) and Footscray (VIC), which Cargill deploys to crush a range of oilseeds (including canola, cotton, sunflower and soybean) to produce crude vegetable oils

    b. the operation of a refining facility in Newcastle, which produces a range of liquid oils (such as canola and sunflower) and shortenings.

11. Cargill is the largest supplier of crude vegetable oils (and the only significant domestic supplier of some crude vegetable oils, e.g. sunflower, soybean and cottonseed oil varieties) and the third largest supplier of refined edible fats and oils in Australia. Cargill is a relatively recent entrant at the refining level of the industry, having established its refining facility in 2007.

Goodman Fielder's commercial edible fats and oils business

12. Goodman Fielder is one of Australasia's leading listed food companies and holds a portfolio of well known consumer brands (including Meadow Lea, Praise, White Wings and Pampas). It produces a variety of food products, including bread, milk, margarine, flour, dressings, condiments, cake mix, pies, smallgoods, desserts and cooking oils.

13. Goodman Fielder is the largest refiner and supplier of edible fats and oils products to Australian and New Zealand food manufacturers and wholesalers. Goodman Fielder presently supplies a wide range of refined edible fats and oils, including margarines and blends, bakery fats and liquid oils. It operates refining facilities at four locations in Australia and New Zealand (West Footscray in Melbourne, Murarrie in Brisbane, Bunbury in Western Australia and Auckland in New Zealand), which form part of the proposed acquisition. Goodman Fielder does not own or operate any oilseed crushing facilities, instead acquiring its crude vegetable oils from domestic and international suppliers. Post acquisition, Goodman Fielder would have continued to acquire refined edible fats and oils for its own food manufacturing businesses.

Other industry participants

Peerless

14. Peerless Holdings is an Australian company incorporated in the early 1950s. The company began as a small business, recycling and rendering meat by-products. In the 1980s, Peerless diversified its operation and established an edible fats and oils refinery, which is located at Braybrook in Victoria.

15. Peerless is one of Australia’s largest privately owned refiners and marketers of edible fats and oil products, including margarines and bulk liquid oil blends. It supplies a wide range of edible fats and oils products to a diverse range of customers, including sunflower and palm oil based products.

Riverland Oilseeds

16. Riverland Oilseeds operates a group of regionally located plants that crush locally grown oilseeds to produce oil and feed meal products for domestic and international markets. Riverland Oilseeds is part of the Gardner Smith Group, which has interests in transport and logistics. Riverland Oilseeds plants are located in Numurkah in Northern Victoria, Millicent in South Australia and Pinjarra in Western Australia.

17. Riverland crushes canola seeds to produce crude canola oil, which is sold to customers that include domestic edible fats and oils refiners. Riverland has recently expanded its Numurkah plant to include oil refining and bleaching capabilities, which produces oil products for intermediate or industrial applications (the plant is not fitted with deodorising equipment, which means that it is not able to fully refine crude vegetable oil into edible fats and oils products).

Manildra / Mac Smith Milling

18. Mac Smith Milling and Manildra jointly operate a vertically integrated crushing and refining facility at Manildra in NSW. The integrated facility crushes and refines canola oil only.

Others

19. There are a number of other industry participants who crush oilseeds and/or operate edible fats and oil refineries in Australia. These other market participants are primarily involved in the crushing or refining of canola based products. Generally, these other participants have smaller capacities when compared to the merger parties and represent only a small fraction of each of the relevant markets.

The proposed transaction

20. On 10 December 2009 Cargill announced that it proposed to acquire Goodman Fielder's commercial edible fats and oils business.

21. The edible fats and oils business to be acquired from Goodman Fielder included four edible fats and oils refining facilities located at West Footscray in Melbourne, Murarrie in Brisbane, Bunbury in Western Australia and Auckland in New Zealand, and other associated assets.

22. Goodman Fielder proposed to retain the title to the land at the Brisbane facility and lease the facility to Cargill for an extended period.

23. In addition, the parties proposed to enter into a long-term supply agreement under which Cargill would supply certain edible fats and oils products to Goodman Fielder.

24. The agreement also included assignment of a number of contracts, including ship chartering contracts for the importation of bulk oils from South America and Asia.

Timing

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

Date	Event
10-Dec-2009	ACCC commenced review under the Merger Review Process Guidelines.
22-Jan-2010	Closing date for submissions from interested parties.
18-Feb-2010	ACCC published a Statement of Issues outlining preliminary competition concerns.
24-Feb-2010	Former proposed date for announcement of ACCC's findings, amended to allow for Statement of Issues.

04-Mar-2010	Closing date for submissions relating to Statement of Issues.
11-Mar-2010	Former proposed date for announcement of ACCC's findings of 18 March 2010 amended to allow for consideration of further information provided by the merger parties and market participants and allow for any necessary additional inquiries.
31-Mar-2010	ACCC announced it would oppose the proposed acquisition.

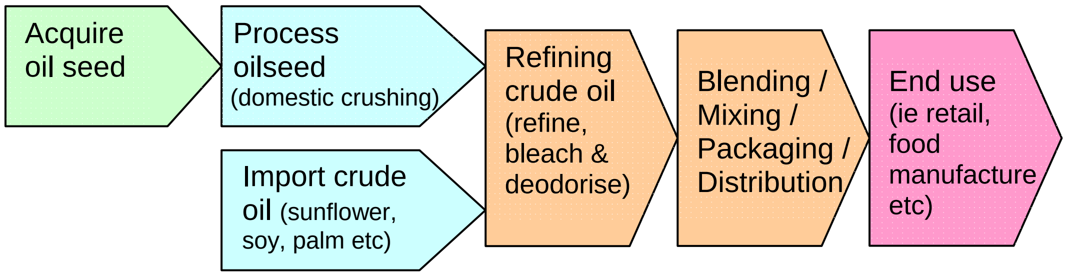
Market inquiries

26. The ACCC conducted market inquiries with a range of industry participants, including competitors, potential competitors, customers, logistics providers, industry bodies and other interested parties. Submissions were sought in relation to the substantive competition issues, in particular those issues raised in the Statement of Issues.

Industry Background

27. Edible fats and oils are lipid materials derived from plant or animal material, which are consumed directly or as ingredients in food and manufactured products. The diagram below sets out the supply chain in relation to the production of edible vegetable fats and oils (**edible fats and oils**).

Figure 1: Edible vegetable fats and oils production and supply chain



28. The raw materials used to make crude vegetable oil, such as canola, soybean, sunflower seed varieties and cotton seeds, are sourced by oilseed crushers from a large number of growers and traders within Australia and overseas. Crude palm oils (which includes palm stearine and palm olein) are sourced entirely through imports, as palm is not grown domestically for the purposes of oilseed crushing.

29. Each year, Australian production of oilseed exhibits a high degree of variability depending on a range of factors (including the extent of drought conditions). Australian oilseed crushers (sometimes also referred to as ‘processors’) are, in some circumstances, able to supplement domestic supply of oilseed through imports. The importation of oilseed may occur in circumstances where there are shortfalls in Australian production or where the particular oilseed required is not grown domestically. However, there are some limitations on the ability of crushers

to import oilseeds due to quarantine requirements. Refiners more commonly import crude vegetable oil to supplement domestic supply.

30. Canola is the predominant oilseed grown in Australia, and Australia is a net exporter of both canola seed and crude canola oil.

31. Sunflower seeds (both polyunsaturated and high oleic varieties) and soybeans are grown domestically, however there is a significant degree of volatility in the growth of these crops in Australia (for example, as a result of drought or late season rainfall). Further, sunflower and soybean are not typically grown in sufficient quantities to meet Australian demand and significant quantities of bulk sunflower and soybean oil is imported for refining in Australia to meet Australian demand.

32. Presently, Cargill is the largest oilseed crusher in Australia. Cargill currently engages in the crushing of a range of oilseeds, including canola, soybeans, sunflower and cotton seed. Cargill is the only significant crusher of non-canola oilseeds in Australia, most notably it is the only crusher of domestically grown sunflower seeds and soybeans.

33. In order to produce refined edible fats and oils, crude vegetable oil must go through the additional step of ‘RBD refining’. RBD refining describes the three distinct processes of refining, bleaching and deodorising crude vegetable oil. Some edible fats and oils products, in particular bakery fats such as margarines and shortenings, must go through additional processing steps (an additional piece of equipment, called a perfector or votator, is ordinarily required to produce these products).

34. RBD edible fats and oils are supplied either in bulk or packaged form, depending on the requirements of the customer. For those products that are supplied as packaged fats and oils, the supplier will also require packaging facilities. Packaged RBD fats and oils for use by participants in the food service industry and quick service restaurants are supplied in varying quantities, most commonly in 20 litre drums or boxed with a bladder lining. Packaged RBD fats and oils are also supplied in smaller quantities for sale through retail channels. Products supplied to customers in bulk are delivered to the customer in specialised tankers (in the case of bulk shortening products, heated tankers are required). Prior to being packaged or loaded into tankers, the refined edible product is ordinarily stored by the refiner in large storage tanks (commonly referred to as a ‘tank farm’).

35. Edible fats and oils products are supplied to a variety of customer channels, which can generally be categorised as follows:

    a. Industrial food manufacturing customers: These customers generally demand bulk RBD oils and/or votated products which are used as an ingredient to manufacture other products (for example, biscuits or confectionary).

    b. Bakery channel: Bakery customers use bulk and packaged fats and oils, including a high proportion of votated products, to make bakery goods (such as cakes and pies).

c. Quick service restaurants (QSR): Primarily demand packaged fats and oils, which are used to produce fast food restaurant products.

d. Food service: Similar to QSR, these customers supply restaurant foods to a variety of customers and include hospitals, schools, restaurants etc. They primarily purchase packaged products.

e. Retail channel: Retail customers primarily purchase packaged goods which are resold through grocery stores.

f. Industrial customers: Industrial customers purchase fats and oils for use in non-edible products (such as biodiesel).

36. The ACCC conducted market inquiries with market participants within each customer channel. The ACCC's inquiries indicated that the customers that were most likely to be affected by the proposed acquisition included acquirers of bulk products (notably industrial food manufacturing customers and the bakery channel).

37. The ACCC's inquiries indicated that some customers require specific blends of fats or oils (for example, a mixture of palm and canola oils). These blends are completed by the refiner at the packaging stage (in the case of packaged products) or blended into the tanker (in the case of bulk products). In this regard, some customers require a supplier that is able to supply a range of oils to meet their needs.

Statement of Issues

38. The ACCC published its Statement of Issues on 18 February 2010 identifying a number of competition issues. In the Statement of Issues the ACCC stated its preliminary view that the proposed acquisition may raise competition concerns by:

a. reducing competition for the manufacture and wholesale supply of bulk RBD oils and bulk votated products

b. increasing the risk of coordinated conduct between wholesale suppliers of bulk RBD edible fats and oils products

c. increasing Cargill's vertical integration, which may affect competition in the market for the manufacture and wholesale supply of bulk RBD oil and bulk votated products and/or the market for the supply of crude vegetable oils.

39. In its Statement of Issues, the ACCC identified the following as issues unlikely to raise concerns:

a. Competition for the supply of refined packaged RBD oils

b. Competition for the supply of votated packaged products

c. Competition for the supply of refined tallow.

Market definition

40. The ACCC formed a preliminary view in its Statement of Issues that the relevant markets for assessing the competitive effects of the proposed acquisition should be defined as:

    a. national market for the supply of refined1 bulk edible fats and oils

    b. national market for the supply of refined packaged edible fats and oils

    c. national market for the supply of refined bulk edible bakery and yellow fats (referred to as bulk votated products)

    d. national market for the supply of refined packaged bakery and yellow fats (referred to as votated packaged products)

    e. national market for the supply of refined tallow

    f. national market for the supply of crude vegetable oils.

41. Further inquiries made following the publication of the Statement of Issues confirmed the ACCC's views on market definition in most respects. However, on the basis of further inquiries, the ACCC refined its views on market definition in relation to the supply of RBD bulk edible fats and oils. In relation to these products, the ACCC took the view that it was more appropriate to define the relevant markets as national markets for the supply of each variety of bulk RBD edible fats and oils, as well as a separate market for the supply of bulk RBD blended oils. The ACCC's further analysis of these markets is set out in the section below.

National markets for the supply of each variety of bulk RBD edible fats and oils and blended edible fats and oils (bulk RBD product markets)

Product dimension

Delivery mode

42. Market inquiries indicated that customers of RBD oils demand the products to be delivered in various modes, so that they are ready for end use. In this regard, both RBD oils (or oil blends) and votated products are delivered in either bulk or packaged form.

43. The ACCC considered that from a customer demand perspective, bulk products and packaged products were not close substitutes. For buyers of bulk products, the ACCC's inquiries indicated that packaged products were poor substitutes. This is due to the difference in quantities and the manner in which the product is delivered (ie there are increased handling and disposal costs for bulk customers if they purchase packaged products).

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[1] For the purposes of the Statement of Issues, the term "refined" referred to the three processes of refining, bleaching and deodorising (RBD).

44. Further, ACCC inquiries confirmed that there are additional specific investments necessary from a supply perspective to supply RBD oils in each delivery mode. For example, to supply packaged products, customers need to make capital investment in packaging and warehouse facilities. Accordingly, the ACCC concluded that suppliers of one particular delivery mode could not switch quickly and without significant investment to the other delivery mode.

Oil varieties

45. The ACCC's preliminary inquiries suggested initially that the relevant market may incorporate various types of RBD edible oils and fats. However, following the release of the Statement of Issues the ACCC was provided with further information that indicated that it was more accurate to consider the competitive effects of the proposed acquisition in narrower product markets. That is, to treat each main type of RBD edible oil and fat as a separate market. In forming its view on the market, the ACCC considered the ability (or inability) of both suppliers and customers to substitute between each type of oil.

46. The ACCC's inquiries following the release of the Statement of Issues confirmed that, for customers of bulk RBD fats and oils products, from a demand perspective there is limited ability to substitute between different types of oils. In the first place, particular RBD fats and oils products have characteristics that make them more suitable for certain uses and as such, it was clear that not all oils will be suitable for all purposes. For example, some oils are less suitable for frying.

47. Further, even for those oils that have some capacity to be substitutable, decisions made by customers to alter the type of oil used in their products are made over time, and usually require research, development and testing of the finished product to ensure that it will satisfy consumer demand based on appropriate health properties of the oil, product quality, flavour profile, shelf life etc.

48. The ACCC's inquiries indicated that customers of bulk edible oil products were very sensitive to increases in price. In this regard, customers would switch between suppliers in response to a price increase, but total demand for any particular type of oil was inelastic because customers could not switch between different types of oil products in response to a price increase (i.e. a customer would not switch from using bulk canola to bulk sunflower oil) and they could not reduce the volume of oil demanded (as it is a necessary manufacturing ingredient for bulk customers).

49. Accordingly, the ACCC considered that different types of bulk RBD edible oils and fats were not close substitutes to each other from the perspective of customers. That is, the potential for demand side substitution between different oil varieties is unlikely to be sufficient to constrain the ability of a hypothetical monopolist supplier of one oil type from profitably imposing a small but significant non-transitory increase in price of that product.

50. From a supply perspective, market inquiries in response to the Statement of Issues indicated that there are minimal technical barriers to switching refining facilities to produce different types of oils (e.g. canola and sunflower varieties). In this regard, if a refiner is producing RBD canola oil they are able to readily switch to

producing RBD sunflower oil from a technical perspective (ie there is no additional equipment required and minimal downtime of production facilities). As such, as considered in the Statement of Issues, one possible way to define appropriate product markets would be to consider broad markets for the supply of refined fats and oils products, incorporating all oil varieties.

51. However, further inquiries indicated that there are a number of practical difficulties limiting the ability of refiners to effectively substitute between the supply of different oil types. In particular, as explained further below, refiners face a number of difficulties obtaining the inputs necessary to switch production to different types of oils at a price which would allow them to provide an effective competitive constraint.

52. Therefore, the ACCC considered that refiners of particular oil varieties are unlikely to be able to sufficiently switch production to another oil variety to effectively constrain the ability of a hypothetical monopolist supplier of that oil variety from profitably imposing a small but significant non-transitory increase in price.

53. The ACCC considers market definition to be purposive in nature, in that it is a tool designed to assist in analysing the competitive effects of a proposed acquisition. In this matter, the ability of refiners to switch supply between different types of oils is limited by their ability to access particular crude oil inputs. Accordingly, the ACCC took the view that it is more appropriate to consider the proposed acquisition in a number of narrower markets for the supply of individual oil types (e.g. poly sunflower oil).

54. The oil types upon which the ACCC considered it appropriate to base the relevant markets are:

    a. High oleic sunflower

    b. Polyunsaturated (poly) sunflower

    c. Soybean

    d. Palm stearine

    e. Palm olein

    f. Cotton

    g. Coconut

    h. High oleic canola

    i. Poly canola.

55. As noted above, some oils are delivered to customers in blended form. For example, a customer may demand a specific blend of RBD canola and palm stearine or a blend of RBD canola and high oleic sunflower. The ability of refiners to supply blends depends on their ability to substitute between the supply of the

different inputs necessary to produce blended products. As a result the ACCC considered that it was also appropriate to consider a separate market for bulk RBD blended oils.

56. The ACCC considered that it was appropriate to define narrower product markets for the purposes of considering the proposed acquisition. However, the ACCC considered that if the product dimension of the relevant markets was defined more broadly, including those markets outlined in the ACCC's Statement of Issues, this would not impact the conclusions reached in the competition analysis.

Geographic dimension

57. The ACCC concluded that the geographic scope of the markets were likely to be national. ACCC inquiries indicated that there were some limitations on the ability of refiners situated on the west coast to supply customers on the east coast (and vice versa). However, the ACCC did not receive sufficient information to form a concluded view that there were separate markets for east and west coast suppliers.

National market for the supply of refined bulk edible bakery and yellow fats (referred to as bulk votated products market)

Product dimension

58. The ACCC considered in its Statement of Issues that votated products were in a separate market to other RBD oils.

59. On the demand side, market inquiries indicated that bulk votated products are manufactured using a variety of oil products, sometimes singularly or as blends. For example, shortenings are commonly manufactured using palm oils and margarines commonly use sunflower oil varieties.

60. Customers that demand votated products are not able to switch to other products (eg. RBD oils) as votated products have specific characteristics (for example, they are required to produce many baked goods and have a specific flavour and texture profile). Accordingly, the ACCC concluded that other products, including RBD oils, were not close substitutes for votated products.

61. To commence supply of votated products a refiner is required to make a significant capital investment in the necessary equipment and achieve sufficient scale to obtain an economic return on that investment. Accordingly, the ACCC concluded that a refiner of RBD oils could not readily switch to the supply of votated products and, as such, considered that votated products should be defined in a separate product market or markets to bulk RBD oils

62. Further, votated products are manufactured using various combinations of single RBD oil varieties and / or blended RBD oils. As such, the ACCC considered that it may be appropriate to consider separate votated product markets according to oil type as outlined in the analysis of bulk RBD oils above. However, for the purposes of this competition analysis the ACCC did not consider it necessary to form a concluded view on market definition in relation to votated products, as it had already concluded that the proposed acquisition would be likely to substantially

lessen competition in a number of markets. In addition, the ACCC considered that the issues informing its view that a substantial lessening of competition would be likely to result in a number of bulk RBD oil markets would extend into any analysis of the relevant votated products market or markets, irrespective of the market definition adopted.

Geographic dimension

63. The ACCC concluded that the geographic scope of the relevant market or markets was likely to be national. ACCC inquiries indicated that there were some limitations on the ability of suppliers situated on the west coast to supply customers on the east coast (and vice versa). However, the ACCC did not receive sufficient information to form a concluded view that there were separate markets for east and west coast suppliers.

Other markets

64. As outlined above, in the Statement of Issues the ACCC also considered the competitive effects of the proposed acquisition in the:

    a. national market for the supply of refined packaged edible fats and oils

    b. national market for the supply of refined packaged bakery and yellow fats (referred to as votated packaged products)

    c. national market for the supply of refined tallow.

65. There were some arguments for considering the proposed acquisition in a number of narrower product markets for the supply of each different packaged RDB edible fat and oil. However, for the purposes of this analysis it was not necessary for the ACCC to form a concluded view on this issue.

Competition analysis – unilateral effects

66. The ACCC concluded that the proposed acquisition would result in a substantial lessening of competition in the following national markets for the manufacture and wholesale supply of:

    a. bulk RBD poly sunflower oil

    b. bulk RBD high oleic sunflower oil

    c. bulk RBD soy oil

    d. bulk RBD blended oil products.

67. The ACCC also continues to have concerns in the national markets for the manufacture and wholesale supply of bulk RBD palm stearine and palm olein. However, the ACCC did not form a concluded view on whether there would likely be a substantial lessening of competition in these markets.

68. The ACCC formed its conclusion that there would be a substantial lessening of competition in certain bulk RBD markets because:

    a. The proposed acquisition would remove a vigorous and effective competitor, which would result in reduced competitive tension in each of the relevant markets.

    b. The proposed acquisition would result in a reduction of competitors supplying certain bulk RDB oil products (most importantly poly sunflower, high oleic sunflower, soybean and blended oils). Notably there are presently only three refiners that supply bulk poly sunflower, high oleic sunflower and blended oils, which would be reduced to two, and only two refiners that supply bulk soybean oil, which would be reduced to one.

    c. Other remaining competitors or potential new entrants could not viably obtain crude vegetable oil inputs necessary to competitively supply particular bulk RBD edible fats and oils products (namely, crude sunflower and soybean based oils and to a lesser extent crude palm oils).

    d. Barriers to entry and expansion, including the inability to viably obtain certain crude vegetable oil inputs, would prevent existing or future market participants from replacing the competition lost as a result of the proposed acquisition.

69. While the ACCC considered that the narrower markets outlined above are the appropriate markets in which to consider the competition effects from the proposed acquisition, the ACCC also considered that the proposed acquisition would result in a substantial lessening of competition if a broader product market definition was adopted.

70. The ACCC considered that the proposed acquisition would result in a substantial lessening of competition regardless of the market definition adopted because the inability to viably obtain crude poly sunflower, high oleic sunflower and/or soybean oils, and to a lesser extent palm stearine and palm olein prevented current or future market participants from replacing the competition lost as a result of the proposed acquisition.

71. The analysis below outlines the reason for the ACCC's conclusion. The ACCC considers that the relevant factors outlined below would be likely to impact competition in either broad or narrow product markets.

Bulk RBD product markets

Market concentration

72. The proposed acquisition would result in significant concentration at the refining level. In particular, the proposed acquisition would combine two of the three competitors that supply a number of bulk RBD oil products, including poly sunflower, high oleic sunflower, palm stearine, palm olein and blended oils. In addition, it would combine the only two suppliers of bulk RBD soybean oil. In relation to canola, the proposed acquisition would combine two of the top three

suppliers of bulk RBD canola. However, other suppliers would remain post-acquisition, including Manildra / Mac Smith Milling and an expected new entrant.

73. Goodman Fielder, Cargill and Peerless are by far the largest refiners in Australia, in that they have the largest capacity and output. However, there exist a number of other refiners that are significantly smaller than the merger parties and do not supply products in many of the relevant markets.

74. While market concentration is not determinative of a substantial lessening of competition, changes in the market structure to the degree described above have the potential to increase the unilateral market power of the merged firm.

Barriers to entry and expansion

75. The ACCC concluded that there are a number of barriers to entry and/or expansion that are relevant to markets for the supply of bulk RBD products. In forming this view, the ACCC considered the recent history of refiners entering or expanding their operations, as well as the ability and incentive for entry and expansion.

76. The ACCC concluded that barriers to entry for a new market participant (ie greenfield entry for a participant without operations in related oil markets) are high, because:

    a. There are significant capital costs, including sunk costs

    b. There is a need to obtain sufficient scale in order to effectively compete

    c. Refiners face significant difficulties in gaining competitively viable access to non-canola inputs

    d. Suppliers may face difficulties attracting customers as customers need to be certain that the supplier can meet their needs to minimise risk to their business (in particular suppliers need to be subjected to quality and assurance standard testing, and prove their ability to ensure continuity of supply, before a customer will be willing to consider switching)

    e. Overcapacity at the refining level is a deterrent to entry

    f. Even in circumstances where some of the above barriers can be overcome, entry is unlikely to be sufficiently timely to provide an effective competitive constraint post-merger.

77. As a result the ACCC concluded that barriers to new entry were high and that actual or threatened new entry would be unlikely to constrain the merged firm from exercising market power post-merger in each of the relevant markets.

78. The ACCC considered that some barriers to establishing refining facilities by certain market participants with operations in other parts of the industry are more likely to be surmountable (for example, where market participants already have partial refining facilities such as refining and bleaching facilities).

79. Further, the ACCC concluded that even if a potential new entrant could overcome the other barriers to entry outlined above, it would still face difficulties in obtaining viable access to the inputs necessary to provide an effective competitive constraint in each of the relevant markets post acquisition.

Viability of access to inputs

80. While the ACCC concluded that new entry is unlikely to be sufficiently timely to provide an effective competitive constraint post-acquisition, it did observe that there are existing refining assets (or expected refining assets) that currently only refine canola oil or do not currently refine edible fats and oils products.

81. Nevertheless, the ACCC concluded that these assets were unlikely to be deployed to provide a sufficient competitive constraint in relation to the manufacture of a number of non-canola products (in particular, bulk RBD poly sunflower, high oleic sunflower, soybean and blended oils) due to a lack of viable access to critical inputs (crude vegetable oils and/or oil seeds) necessary to supply each of the non-canola oil types currently supplied by Goodman Fielder and Cargill.

82. Different crude vegetable oils are supplied through varying supply chains, either entirely from domestic supply, a combination of domestic supply and import supply, or fully imported. Imported oils are typically supplied from either Southeast Asia (palm and coconut oils) or South America (poly sunflower, high oleic sunflower and soybean oils).

83. If there is insufficient seed grown locally to meet local demand (e.g. poly sunflower), refiners must import oil to meet market demand. Refiners can either import crude vegetable oil to be fully refined in Australia, or import RBD oil which requires re-deodorising in Australia to meet the specifications of downstream customers, in particular, customers of bulk RBD oils. Refiners may switch between importation of crude vegetable and RBD oils depending on relative costs. However, customers require all imported bulk oil to undergo further refining (including, at a minimum, deodorising) to meet their needs.

84. For certain oil varieties (in particular, poly sunflower, high oleic sunflower and soybean), the proposed acquisition would provide the merged firm with access to the two most cost effective sources of supply (i.e. the limited domestic supply and direct bulk tanker imports from South America). Without access to these existing supply chains, the ACCC concluded that a potential new entrant would face higher costs and risks due to a need to expand domestic supply, take domestic supply from the merged firm, or utilise more costly import alternatives.

85. The ACCC's inquiries indicated that this increase in cost would need to be substantially passed on to customers in order to maintain viable operation of refining assets. As such, the ACCC concluded that the level of competitive constraint likely to be provided by a potential new entrant in a number of downstream markets (in particular, bulk RBD poly sunflower, high oleic sunflower, soybean and blended oils) would be limited and would not sufficiently replace the competitive constraint lost as a result of the proposed acquisition.

Shipping of oils

86. Market inquiries revealed that there are two possible methods for importing or exporting bulk oils. Firstly, oils can be transported in specialised bulk liquid tanker vessels. These tanker vessels can range in capacity from upwards of approximately 9,000 tonnes. Each ship has a number of compartments of varying size and each compartment can be used to transport a different liquid so that a range of different liquids can be transported on the same voyage. For example, a ship may be used to import a range of food and non-food liquids (ie crude poly sunflower oil, ethanol and sulphuric acid).

87. Alternatively, fats and oils may be transported on container ships in a 'flexi-bag' that is housed inside a container. Flexi-bags are essentially large bladders holding approximately 20 tonnes of oil. The ACCC's inquiries indicated that it can be impractical to use flexi-bags to ship large quantities of oil due to a number of issues which increase costs for refiners, due to increased wastage, storage, disposal and handling costs, including:

    a. large volumes of flexi bags are difficult to handle, as dealing with significant numbers of containerised flexi-bags is practically and logistically difficult

    b. a larger portion of the oil is lost in this transport process (compared to importation in bulk liquid tankers) as a greater proportion remains in the flexi-bag

    c. flexi-bags themselves create a large volume of waste that must be managed.

Shipping contracts

88. There are a number of different shipping contracts that may be sought by charterers (whom are usually refiners, but can be third parties who on sell oils once the product enters Australia) that wish to import bulk liquids, including fats and oils. These include:

    a. Spot contracts (ie one off contracts of affreightment)

    b. Long term contracts

    c. Voyage charter agreements (i.e. full vessel charter).

89. The ACCC's inquiries indicated that there is significant volatility in shipping spot markets, which means that while a charterer may, at times, be able to obtain cheaper rates under a spot contract than under a long term contract, that charterer may also face much higher rates at other times. In addition, freight space may not be available at the appropriate time necessary for the charterer to ensure supply. Market inquiries indicated that this may impact on the ability of a refiner to effectively compete for downstream contracts.

90. Longer term shipping arrangements provide greater security of supply and ensure certainty in shipping rates for the charterer, and as such, are the standard method of importation used by importers of oils.

91. Certainty of supply and certainty relating to costs are important considerations for refiners when tendering to supply refined oils to bulk customers. Customers often require refiners to break down the pricing of their tenders into a number of components, including freight costs, to compete to supply forward contracts. Without certainty of freight rates, it is difficult for suppliers to predict the cost of freight and as such, difficult to compete for contracts without a significant degree of risk.

92. Although spot contracts are used to obtain imports of bulk oils from time to time, they are used infrequently, usually for one off purchases when long term shipping arrangements are unable to meet requirements for some reason. In some circumstances, these one off arrangements may result in a loss for the importer who must access the inputs to meet their obligations to supply forward contracts.

93. In addition, there are very limited circumstances in which importers may obtain spot shipping on bulk liquid tankers direct from South America. Spot shipping from Asia can be more common, given the greater frequency and number of bulk liquid tanker vessels travelling to and from Asia. Further, one off voyage charter agreements are less common for the importation of bulk oils to Australia, as there are few charterers who would be able to fill the volume of a liquid tanker vessel outside of a long term contractual arrangement.

<u>Sources of inputs (crude vegetable oil and/or oilseeds)</u>

Sunflower and soybean

94. Since at least the mid 1980's domestic refiners have supplemented domestic supply of poly sunflower and soybean oils (and later, high oleic sunflower oil) with significant volumes of crude sunflower and soybean oils sourced from South America.

95. Over time, oils from South America have been acquired and transported to Australia through a number of different arrangements. The common characteristic of the arrangements has been the aggregation of volume by market participants to reduce freight costs and enable efficient supply of the necessary oils.

Domestic supply

96. Cargill is currently the only domestic crusher of sunflower seeds and soybeans in Australia. Cargill self supplies these crude vegetable oils from the domestically sourced inputs and sells the remaining crude vegetable oil to other refiners.

97. The supply of domestic crude poly sunflower, high oleic sunflower and soybean oils in Australia is constrained by the next best alternative, that is, the landed prices of these oils from South America. By extension, this constraint on the price of domestic crude sunflower and soybean oils also impacts the price at which these

oilseeds are acquired in Australia. The existence of imports and the related impact on the price of oilseeds in Australia therefore determines the size of the relevant crops in Australia. The price and size of these domestic oilseed crops is also influenced to some extent by the price which farmers can obtain for alternative crops, notably sorghum, which may also be less risky and less costly to grow.

98. There is a significant degree of volatility in the growth of sunflowers in Australia, depending on the timing of rain in the sunflower growing regions. If rain does not fall at the right time of year, or rains too heavily there is likely to be a significant impact on the crop yields.

99. Given the unpredictable nature of the poly and high oleic sunflower crops, there is considerable risk associated with supply of crude oils purely from domestic sunflower varieties, particularly due to the need to obtain regular volumes to ensure supply to downstream contracts, particularly bulk customers.

100. There is less volatility surrounding the soybean crop in Australia. However, volatility in domestic supply may still impact the risk to a new refining entrant if it relies solely on supply from domestic sources. Further, the dynamics affecting the quantity of soybean grown are different given that the meal produced from soybean is of significantly higher value when compared to the crude vegetable oil.

101. When Cargill entered the refining functional level in 2007, it was the sole incumbent supplier of the whole of the domestic supply of polyunsaturated sunflower, high oleic sunflower and soybean oils. As a result, it was already in a position to ensure that it could self-supply these oils, and continue to sell the excess to other refiners. In this regard, it was uniquely placed compared to a possible new entrant wanting to enter or expand into refining of these oils today.

102. The volume of crude vegetable oil that Cargill crushes and sells to other refiners, beyond Cargill's internal requirements, provides Cargill with a volume buffer to diminish the risk to its cost structure associated with potential crop failures. That is, if the crop fails and there is less seed available to crush, Cargill is in a position to continue to supply crude vegetable oil internally and reduce the volume of crude oil supplied to competing refiners. Thus, there is considerably less risk that it would need to consider relying on the next best import option to meet its contract obligations. A new entrant is likely to face significant difficulties in replicating this scenario and as such, is likely to face more significant risks relying on supply of domestic seed to meet forward contracts.

103. A new entrant attempting to ensure supply of crude sunflower and/or soybean oil varieties from domestic sources must first compete with Cargill to acquire seed. To do this it is likely to need to offer a higher price for seed to either switch existing farmers or aggregators so it can take existing supply from Cargill and/or to increase the overall quantity of seed grown in Australia, which adds to the costs and risks of entry.

104. In order to effectively compete to supply bulk industrial food manufacturers (and therefore provide an effective competitive constraint in the relevant markets), it would be necessary for a new entrant to be able to source sufficient quantities of

seed to meet their demand. Some bulk customers require significant volumes of these oils each year and as such, to effectively compete to supply some large bulk customers, a new entrant must secure a significant volume of the current domestic crops or significantly increase the size of the crops.

105. The ACCC considered that a new entrant would be likely to face significant difficulties acquiring sufficient volumes of seed to meet the demands of some customers at a sufficiently low price to defeat an anti-competitive price rise resulting from the proposed acquisition.

106. The ACCC's inquiries indicated that other market participants would likely face increased costs in obtaining supply of domestic crude sunflower and/or seeds (when compared to Cargill's current costs). Inquiries indicated that an attempt to increase the amount of domestic seed grown would result in an increase in the price of seed (which would likely have the effect of increasing costs downstream). Further the geographic location of some other major crushers acts as a further impediment to the viable supply of the crude oil from these seeds. In this regard, it is necessary for the crusher to be located in or near the regional area where sunflower and soybean varieties are grown (ie northern NSW and southern Qld), given that transporting seeds affects the final cost at which the crude vegetable oil can be supplied.

107. In addition, the ACCC considered that the volatility of these crops in Australia would be likely to result in a significant level of risk for a new entrant seeking to be supplied solely through domestically crushed seed. In the first place, there are significant risks and costs to acquire sufficient seed internally. Further, if the crop fails and the refiner needs to acquire imported product to meet its contract obligations, it will face additional costs associated with the next best import alternative, which may result in an operating loss. The ACCC's inquiries indicated that this risk was likely to result in difficulties securing forward contracts from customers for bulk poly sunflower, high oleic sunflower and soybean oil varieties. Additionally, the ACCC considered that there are certain barriers that would be likely to affect a potential new entrant's ability to viably import specific products, which is expanded on below.

Imported crude sunflower and soybean oil

108. All imported sunflower and soy oil is currently sourced from South America. Goodman Fielder currently charters bulk liquid vessels to transport these oils to Australia.

109. Since the 1980s only one shipping company has consistently operated a regular bulk liquid service between South America and Australia. This source has been responsible for all of the regular volumes of sunflower and soybean oils required in Australia.

110. The ACCC considered the potential viability of a number of alternatives to shipping oil from South America to Australia via the above arrangements. In particular, the ACCC considered:

a. Trans-shipping via Asia in bulk liquid ships

b. Shipping oil in 20 tonne flexi bags housed in a shipping containers

c. Diverting a ship that is travelling to Asia to stop at a port in Australia

d. Less frequent sailings of bulk liquid ships direct from South America.

111. The ACCC's inquiries raised a number of concerns about each of the alternative shipping options identified above, and identified the fact that none of the alternatives had functioned as a practical alternative in the past. The ACCC's inquiries further indicated that a new entrant wishing to obtain crude vegetable oils via these methods is likely to face a significant increase in cost (relative to Cargill and Goodman Fielder's existing arrangements), so as to impact their ability to provide an effective competitive constraint in downstream markets post-acquisition.

112. Broadly speaking, the ACCC's inquiries indicated that the next best alternative to a dedicated ship from South America to Australia would be a trans-shipping arrangement utilising a bulk liquid tanker vessel. It is noted that trans-shipping can only be done at a significant price premium and at greater risk when compared to direct shipping from South America, in particular:

a. the cost of two shipping legs (ie Argentina to Singapore to Australia) adds a price premium, which is not always certain if spot market rates are used.

b. there is a need to store the oil in Asia, which results in an inflated price and availability of storage space can be an issue.

c. there is likely to be increase shrinkage, given that the oil needs to be transferred on a number of occasions.

d. there is a risk that the refiner may not be able to get access to vessels or storage that suits its production timing.

e. there was no evidence that refiners regularly use transhipping as a source of importing crude oil.

113. The ACCC conducted market inquiries with a wide range of market participants (including market participants at various functional levels of the supply chain, transport and logistics companies) to assess the various costs associated with the importation of oil via trans-shipping through Asia. Following these inquiries, the ACCC considered that imports of smaller volumes via such arrangements would be likely to significantly increase the costs of these inputs relative to the costs faced by Cargill and Goodman Fielder under their current arrangements.

114. The ACCC notes that numerous cost figures provided by market participants were based on estimations of the various spot markets at the time. The ACCC's inquiries indicated that shipping rates on spot markets were relatively low due to depressed shipping markets. The ACCC's inquiries indicated that given the depressed shipping rates, it may be difficult for an importer to secure a long term contract close to the current spot rates as shippers would be more likely to consider that shipping rates will increase over time and, as such, continue to supply at the spot price unless enticed with a higher contract price.

115. As outlined above, given the need to tender for and supply forward contracts, the uncertainty of shipping spot markets creates a high degree of risk to a refiner seeking to supply these customers, and as such, longer term shipping contracts are the standard method of importation of crude oils.

116. The ACCC also conducted inquiries with a wide range of market participants in relation to the ability of refiners to effectively compete utilising imports of crude oil directly from South America in flexi bags in containers. The ACCC's inquiries indicated that importation via this method would significantly increase the costs of a potential new entrant.

117. Market participants also raised concerns that obtaining large volumes of crude vegetable oils in flexi bags raises a number of other logistical and cost issues (as discussed above).

118. Market participants were quick to dismiss the possibility of diverting a ship bound for Asia to Australia to supply the volumes required in Australia as this would increase the sailing time of the ship to Asia (where the majority of the cargo would be bound) and would be an expensive way to deliver relatively small volumes of oils to Australia.

119. Given that under the current import arrangements from South America there are multiple sailings each year, the ACCC considered the possibility that an importer could charter a ship to import all of their oil requirements only once a year (or even less frequently) to be stored for ongoing use throughout the year. However, the ACCC's inquiries indicated that the associated storage costs would quickly increase the cost of the oils so that this supply method would impact the ability of a potential entrant to provide an effective competitive constraint.

120. The ACCC also considered the ability of charterers to combine crude oil imports with other liquids (for example, non-edible liquids such as ethanol). The ACCC's inquiries indicated that there are not sufficient volumes of other liquids demanded in Australia to support another vessel on this route.

121. In addition, as outlined above, the ACCC considered that there are a number of barriers to entry that are likely to impede the ability of a new entrant to provide a timely competitive constraint post-acquisition. As such, the most likely competitors to enter or expand into the manufacture and wholesale supply of sunflower and soybean oils are those that are likely to have operational refining assets within the next two years. The only market participants that are likely to have such assets are located inland, away from port access. The ACCC's inquiries

indicated that these refiners would face additional costs to manufacture and supply RBD oils from imported crude inputs given the additional freight costs from the port to their refineries.

122. Even if a potential new entrant was located sufficiently close to a port to avoid these additional freight costs, the ACCC considered that the additional costs faced by such a new entrant seeking to access crude oils from South America would significantly diminish the ability of the entrant to effectively replace the competitive constraint lost as a result of the proposed acquisition. In addition, the ACCC considered that domestic transport costs, which the most likely new entrants will face, are likely to further increase the costs for supply of RBD sunflower and soybean oil products in the relevant markets, thus further diminishing the competitive constraint that these entrants would be likely to provide post-acquisition.

Palm and coconut

123. Palm seeds and coconuts are not grown in Australia, and thus must be imported. Palm oil is commonly used in Australia in a variety of food and non-food products. It is relatively resource intensive to produce when compared to other oils and is primarily grown in Asia. Coconut oil is less commonly used, but is demanded by some customers. It is also primarily imported from Asia.

124. Cargill currently acts as head charterer for regular shipments of palm oils from Asia. Goodman Fielder also charters separate vessels for the purpose of importing palm oil from Asia. Goodman Fielder and Cargill are able to take advantage of mutually beneficial volume discounts by sub-chartering space on their respective chartered vessels.

125. While Goodman Fielder and Cargill take advantage of volume discounts from Asia, the cost differential of the next best option is not as significant as oils imported from South America. In particular, it is possible for an importer to obtain space on some of the existing ships sailing this route chartered by either Cargill or Goodman Fielder. This space could theoretically be obtained on the spot market or potentially via a long term contract to provide more certainty over the cost of shipping (as outlined previously, refiners usually obtain imports of oil under long term contracts to reduce risk). However, an alternative importer of bulk oils on these ships is likely to face marginally higher costs to Cargill or Goodman Fielder given their existing arrangements.

126. While an alternative importer is likely to face higher costs of shipping than Cargill or Goodman Fielder, the ACCC's inquiries generally supported the view that a refiner seeking to ship bulk oils from Asia is likely to be able to obtain shipping at rates that are not significantly higher than those currently obtained by existing market participants.

127. However, the ACCC noted that in order to viably access imported palm inputs to provide an effective competitive constraint, a refiner would most likely need to be located near or within ready access of port facilities. As outlined above, the ACCC considered that the most likely entrants into various markets for the manufacture

and wholesale supply of bulk RBD oils are located inland, away from port facilities. As such, the most likely entrants will face additional inland freight costs that may diminish the ability of these participants to constrain the merged entity.

128. The ACCC noted that, given the much lower differences in shipping costs, the possibility of entry into the manufacture and wholesale supply of RBD oils supplied from inputs coming direct from Asia (palm and coconut) was likely to be slightly better than the potential for entry into the manufacture and wholesale supply of RBD oils supplied from inputs coming from South America (sunflower and soybean). However, the ACCC considered that there remained a concern about the ability of other market participants, in particular the most likely entrants, to effectively replace the competitive constraint lost as a result of the proposed acquisition in relation to the supply of oils imported from Asia, in particular palm oils.

129. The ACCC did not form a concluded view on whether the proposed acquisition was likely to result in a substantial lessening of competition in the relevant markets that utilise access to inputs from Asia. While the ACCC had concerns in relation to these markets, it took the view that it was unnecessary to form a concluded view, as it had already concluded that the proposed acquisition would be likely to substantially lessen competition in a number of markets.

Canola and cottonseed

130. In normal years there is a surplus of canola and cottonseed in Australia which results in net exports of both the seed and crude oils. Australia has only relied on imports of canola and cottonseed oils in bad drought years when demand outweighs supply. The ACCC did not consider that an issue arose from the transaction in relation to canola and cottonseed inputs (apart from the vertical integration issue, which is discussed further below).

Countervailing power

131. The ACCC considered whether customers were likely to be able to exercise countervailing power, for example by credibly threatening to bypass the merged firm by sponsoring entry, manufacturing in-house, or moving manufacturing facilities offshore. The ACCC's inquiries indicated that customers were unlikely to have sufficient countervailing power so as to constrain the merged firm from exercising market power.

132. The ACCC considered that the barriers to entry and expansion discussed above would equally apply to the sponsoring of entry or expansion, or manufacturing in-house. In particular, the ACCC's market inquiries indicated that even the largest customers of bulk refined oils would be unlikely to have sufficient volumes to support entry of new refining facilities, especially in an environment where there already exists excess capacity at the refining level. In any event, even if bulk customers could sponsor the entry of new refining facilities, the new entrant would continue to face barriers to viably access the inputs necessary to effectively constrain the merged firm in a number of relevant markets.

133. In addition, the ACCC's inquiries indicated that oil is only one input used by customers of bulk oils to manufacture their finished products. As a result, any consideration of moving manufacturing operations offshore would be based on a range of factors and would not necessarily be contemplated in response to an increase in the price of bulk refined oil products.

Imports of bulk RBD oils

134. The ACCC's inquiries indicated that, while imports of packaged RBD edible fats and oils exist, the threat of imports of bulk RBD oils is unlikely to significantly constrain the ability of the merged firm to exercise market power post acquisition.

135. Market participants advised that importation of bulk RBD oil product is problematic given:

a. The impact of freight costs, including the cost of installing additional storage to manage inventory risk

b. There is an increased supply chain risk, in particular in controlling quality from overseas manufacturers and ensuring certainty of supply

c. Product tends to degrade during transport, thus requiring further refining (in particular deodorising) when it reaches Australia

d. There are significantly longer lead times.

136. The ACCC's inquiries indicated that while there are some limited examples of the importation of RBD bulk oil products, in practice importation of these products does not represent a viable ongoing alternative supply option for customers and would be unlikely to provide an effective competitive constraint post-acquisition.

Closeness of competition and availability of substitutes

137. The ACCC's inquiries indicated that Cargill's entry at the refining level resulted in increased competition which benefited customers. In this regard, Cargill was considered to be a vigorous and effective competitor that was responsible for increasing competition in the relevant markets. For example, inquiries indicated that Cargill was particularly responsive and innovative in fulfilling customer needs.

138. Further, the ACCC's inquiries with market participants indicated that Goodman Fielder and Cargill are each other's closest competitors for the supply of a number of oil products, competing vigorously to win supply contracts. The ACCC's inquiries indicated that for a significant number of customers, other market participants do not provide a similar level of competitive tension as Goodman Fielder and Cargill.

139. The ACCC's inquiries indicated that due to the current arrangements for obtaining supply of crude vegetable oil inputs, Goodman Fielder and Cargill face the lowest cost structure and therefore, are in a position to most closely compete to supply bulk customers with the relevant RBD oils, in particular, bulk RBD poly sunflower, high oleic sunflower and soybean oils. In this regard, the proposed

acquisition would result in a situation where the merged firm would have ready access to the two most economically viable sources of a number of crude oils, namely, domestically supplied and imported oils. As identified above, the ACCC considered that other refiners would not be able to replicate the existing efficiencies in either of these supply chains and as such, would not be able to effectively replace the competitive tension between Cargill and Goodman Fielder lost as a result of the proposed acquisition.

140. The ACCC considered the number of alternative suppliers and whether they could sufficiently replace the competition lost as a result of the proposed acquisition.

141. When considering the proposed acquisition in the context of markets based on oil varieties, it is noted that the proposed acquisition would result in a reduction of competitors from three to two in markets for the wholesale supply of poly sunflower, high oleic sunflower, palm stearine, palm olein and blended oil based products, and a reduction of competitors from two to one in those markets for soybean based products.

142. As stated above, in a number of markets the ACCC's inquiries indicated that Goodman Fielder and Cargill are each other's closest competitors for a significant proportion of customers. For example, in markets for the wholesale supply of bulk soybean oils they are the only suppliers.

143. The ACCC's inquiries concluded that in a number of markets for the supply of bulk products, notably sunflower and soybean related markets, there are few available alternatives suppliers. Further, it is noted that where alternative suppliers do exist, they are capacity constrained in their ability to immediately expand production.

Conclusion on unilateral effects in bulk RBD product markets

144. Based on the above, the ACCC considered that the proposed acquisition was likely to have the effect of substantially lessening competition in a number of markets. Specifically, the ACCC considered that, based on narrow market definitions, the proposed acquisition would result in an substantial lessening of competition in the following markets:

a. national market for the manufacture and wholesale supply of bulk RBD poly sunflower

b. national market for the manufacture and wholesale supply of bulk RBD high oleic sunflower

c. national market for the manufacture and wholesale supply of bulk RBD soy oil

d. national market for the manufacture and wholesale supply of bulk RBD blended oil products.

145. The ACCC remains concerned that the proposed acquisition would result in a substantial lessening of competition in the national markets for the manufacture

and wholesale supply of bulk palm stearine and palm olein. While the ACCC had concerns in relation to these markets, it took the view that it was unnecessary to form a concluded view, as it had already concluded that the proposed acquisition would be likely to substantially lessen competition in a number of markets.

146. The ACCC concluded that there would be sufficient alternative suppliers of bulk canola and cottonseed oil, including an expected new entrant or entrants, such that the proposed acquisition would be unlikely to result in a substantial lessening of competition in these markets.

147. The ACCC also concluded that the proposed acquisition would result in a substantial lessening of competition should a broader market definition be adopted because:

   a. There are difficulties obtaining viable access to raw polyunsaturated sunflower, high oleic sunflower and soybean inputs, which resulted in high barriers to entry and/or expansion, meaning that any future or existing refiner would be unable to effectively supply certain significant bulk RBD edible fats and oils products necessary to sufficiently replace the competitive constraint lost as a result of the proposed acquisition.

   b. There would be significant aggregation between refiners that supplied certain bulk RBD edible oil products (ie there would be a reduction in competitors of this kind from three to two for some bulk RBD oils and two to one for others) and consequently, a reduction in the number of suppliers able to competitively supply a number of significant segments within any broader market.

   c. The competitive tension lost as a result of the proposed acquisition would be unlikely to be replaced in the foreseeable future given the height of the barriers to entry and expansion.

Bulk votated products

Market concentration

148. The ACCC's inquiries indicated that Cargill and Goodman Fielder are considered by customers to be each other's closest competitor for the supply of bulk votated products. It is noted that there are other refiners with votation equipment. However, it is unclear of their ability to effectively constrain the merger parties in the supply of bulk votated products.

Barriers to entry and expansion

149. Market inquiries indicated that entry into the market for the manufacture and wholesale supply of bulk votated products would be most likely to occur through incremental expansion of existing refining assets. This is because RBD oils are a necessary input into the supply of votated products and votated products are generally supplied by refiners. In this regard, barriers to entry and expansion in refining markets remain relevant to entry into votated products.

150. In addition, the ACCC considered that, although the cost of the additional plant and equipment required to produce votated products is relatively low compared to a full refining facility, given that votation equipment is used to 'value add' to much smaller volumes of products than refining assets, the costs associated with votation equipment may be sufficiently high so as to inhibit entry into the relevant market or markets.

151. In particular, a refiner seeking to enter the votated product market or markets would need to be satisfied that it could obtain sufficient scale in the supply of votated products to justify its investment. Thus, expansion is linked to the ability of a refiner to win new customers (either through appropriating them from competitors or through increased customer demand) without making such an investment unviable.

Viability of access to inputs

152. The ACCC considers that the issues outlined in relation to the access to inputs necessary to supply certain RBD oil products remain highly relevant to the competition analysis in votated products. Votated products are made by subjecting RBD oils to further manufacturing steps, commonly referred to as votation or crystallisation. A new entrant into the relevant votatated products market or markets would need to viably access the RBD edible oils necessary to produce the votated products.

153. As a result, the ACCC concluded that any inability to viably access the relevant inputs to manufacture votated products (i.e. various bulk RBD oils or the inputs necessary to manufacture these bulk RBD oils) would inhibit new entry into the relevant market or markets for bulk votated products.

Countervailing power

154. The ACCC notes that there was some evidence that customers had sponsored the entry of a refiner into the votated product market or markets in the past by providing long term contracts. However, the ACCC further notes that there are very few customers who have sufficient volume requirements for bulk votated products to effectively sponsor new entry. In addition, it is relatively easy for suppliers to discriminate on price between customers such that any customer that does not demand sufficient volumes to sponsor new entry may be affected by a reduction in the number of competitors from the proposed acquisition.

155. In addition, there was no evidence to indicate that customers can use countervailing power in order to viably access the inputs necessary to produce bulk votated products (i.e. customers can not change those issues concerning the viability of access to sunflower, soybean or palm inputs).

156. The ACCC formed the view that, on balance and based on the number of customers with the ability and incentive to exercise countervailing power, there were serious questions regarding the likelihood of countervailing power acting as a sufficient constraint in the relevant market or markets.

Conclusion on votated products

157. The ACCC concluded that the reduction in the number of existing competitors supplying bulk votated products, combined with the inability to viably access inputs necessary to produce a variety of bulk votated products, raised a serious question as to whether a substantial lessening of competition was likely to arise in the relevant market or markets for the manufacture and wholesale supply of bulk votated products. The ACCC notes that this conclusion would be reached regardless of whether a narrow or broader market definition was adopted.

158. Given the ACCC's conclusion outlined above in relation to a number of relevant bulk RBD oil markets that the inability of suppliers to gain viable access to inputs would result in a substantial lessening of competition, the ACCC did not form a concluded view on whether, absent these concerns, the merged firm would face sufficient competitive constraints in the relevant votated product market or markets. In particular, the ACCC did not form a concluded view on whether potential entry or countervailing power would be sufficient to effectively constrain the merged firm post-acquisition.

Competition analysis - Coordinated effects

159. In the ACCC's Statement of Issues, the ACCC outlined concerns that the proposed acquisition may increase the risk of coordinated conduct in relevant markets for the manufacture and wholesale supply of bulk edible fats and oils products.

160. Following the receipt of further information after the publication of the Statement of Issues, the ACCC formed the view that the proposed acquisition would be unlikely to result in a substantial lessening of competition as a result of coordinated conduct.

Competition analysis - Vertical Integration Issues

161. In addition to considering the competition concerns on a horizontal basis, the ACCC also considered whether additional concerns arose from a vertical perspective. In its Statement of Issues, the ACCC sought further information to assist its assessment of whether Cargill's increased vertical integration would affect competition in the relevant downstream bulk RBD oil and votated product market or markets and / or the relevant upstream crude vegetable oil market or markets.

162. The ACCC identified two issues in its Statement of Issues that may have raised competition concerns as a result of Cargill's increased vertical integration, being as follows:

   a. The loss of Goodman Fielder as a customer to other crushers may affect the viability or efficiency of those crushers. This would tend to lead to lower prices for crude canola oil.

   b. On the other hand, the loss of Cargill as a supplier of crude canola oil to refiners may result in reduced competition for the supply of crude canola oil. This would tend to lead to higher prices for crude canola oil.

163. The ACCC considered that the increased vertical integration of Cargill may alter the bargaining power between crushers and refiners, but that it was not clear which way that power would shift and how it would affect the price at which crude oil was acquired and/or supplied. This is because the above issues consider the shift in demand and supply of crude vegetable oils in isolation but when considered together, there is a shift in both contestable supply and demand.

164. As a result of the above, the ACCC was unable to conclude that the proposed acquisition would result in a substantial lessening of competition on these particular grounds. It is noted that this assessment does not impact on the ACCC's conclusion that the proposed acquisition was likely to substantially lessen competition on other grounds as outlined in previous sections of this Competition Assessment.

Conclusion on other markets identified in the Statement of Issues

165. Information received during market inquiries following the publication of the Statement of Issues confirmed that competition issues were unlikely to arise in relation to the wholesale supply of packaged products and tallow.

166. In relation to the markets for the wholesale supply of packaged products RBD oils and wholesale supply of packaged votated products, the ACCC's inquiries indicated that there were unlikely to be competition concerns arising from the proposed acquisition as imports of packaged products would be likely to act as a constraint on any attempt by the merged firm to exercise market power. There are currently significant volumes of imported packaged RBD oils and votated products and imports of these products do not pose the same difficulties as imports of bulk RBD oils and votated products (which are explained further above).

167. Regarding the manufacture and supply of tallow products, the ACCC understands that Cargill does not supply refined tallow (although it does supply unrefined tallow products to downstream participants), and accordingly, the ACCC concluded that the proposed acquisition was unlikely to have a significant impact on competition in these areas of activity.

Conclusion

168. On the basis of the above the ACCC formed the view that the proposed acquisition of Goodman Fielder's commercial edible fats and oils business by Cargill Australia Ltd would be likely to result in a substantial lessening of competition in contravention of section 50 of the Act in one or more markets for the manufacture and wholesale supply of bulk RBD:

a. poly sunflower oil

b. high oleic sunflower oil

c. soybean oil

d. blended oils.