



14 August 2006

Statement of Issues: OneSteel Limited – proposed acquisition of Smorgon Steel Group 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 Smorgon Steel Group Limited (Smorgon) by OneSteel Limited (OneSteel).
2. A Statement of Issues published by the ACCC is not a final decision regarding a proposed acquisition, but provides preliminary views, and draws attention to particular issues of varying degrees of competition concern to the ACCC, as well as on the lines of enquiry that the ACCC wishes to undertake.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website: www.accc.gov.au) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC will receive responses to this Statement of Issues and complete its further market inquiries by 23 August 2006. The ACCC expects to make a final decision on 6 September 2006. However, the indicative timeline can change in line with the *Merger Review Process Guidelines*. To be kept abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the ACCC's website which contains the Mergers Register. To find the Mergers Register follow the link to "Public Registers" and then the link to "Mergers Register".

Date	Event
26 June 2006	ACCC commenced assessment under Merger Review Process Guidelines
27 June 2006	ACCC commenced first round of market inquiries
7 July 2006	ACCC requested further information from OneSteel
11 July 2006	Closing date for submissions for the first round of market inquiries
17 July 2006	ACCC received further information from OneSteel in response to request of 7 July 2006.
28 July 2006	ACCC requested further information from OneSteel
7 August 2006	ACCC received further information from OneSteel in response to request of 28 July 2006.
14 August 2006	ACCC released a Statement of Issues in relation to the proposed acquisition
23 August 2006	Closing date for submissions in response to the Statement of Issues
6 September 2006	Proposed announcement of ACCC findings

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 intended to also provide both the merger parties and other interested parties with the basis for making further submissions should they consider it necessary

Background

5. On 26 June 2006, OneSteel sought informal clearance from the ACCC for a proposed acquisition of Smorgon under the ACCC's Merger Review Process Guidelines..
6. OneSteel has offered draft section 87B undertakings to the ACCC. The undertakings are in relation to two main points:
 - (i) A provision that, following the acquisition, OneSteel will demerge the Smorgon steel distribution businesses. This proposal does not include the non-distribution businesses within the Smorgon distribution division, namely the pipe and tube manufacturing operations, some regional reinforcing businesses and the Smorgon Steel Colour Coaters business.
 - (ii) A provision that provides for an assessment by an independent person of any steel anti-dumping application made by OneSteel (for a period of 3 years following the acquisition) having regard to certain criteria set out in the undertaking. The assessment would be provided to the ACCC at least one month before any lodgement of a steel anti-dumping application made by OneSteel.
7. The draft undertaking is available for viewing on the ACCC's website.

The parties

8. OneSteel is a vertically integrated mining, steel manufacturing and metal products distribution company. OneSteel manufactures and distributes a range of long and tubular steel products including structurals, rail products, rod and bar, wire, pipe and tube, and reinforcing products. OneSteel's principal operations include:
 - an iron ore mine at Whyalla;
 - steelworks at Whyalla and Sydney;
 - steel rolling (rod and bar) mills at Newcastle and Sydney, and wire mills/rural products manufacturing facilities at Newcastle and Geelong;
 - pipe and tube mills at Sunshine and Somerton, Kwinana, Kembla Grange and Newcastle;
 - a steel reinforcing processing and distribution network (OneSteel Reinforcing); and
 - steel and aluminium products distribution businesses.
9. OneSteel is listed on the Australian Stock Exchange.

10. Smorgon is a vertically integrated manufacturer of long and tubular steel products, with metal scrap collection, steel manufacturing and metal products distribution divisions. Smorgon's principal operations include:

- a scrap metal collection and processing business;
- steelworks at Laverton (Victoria) and Waratah (New South Wales);
- steel rolling (rod and bar) mills at Laverton and Waratah, and a wire mill at Laverton North (Victoria);
- pipe and tube mills at Acacia Ridge (Queensland);
- a grinding media business comprising manufacturing facilities at Newcastle, Kansas City (USA) and West Java (Indonesia);
- a reinforcing business; and
- a steel and aluminium products distribution business.

11. Smorgon is listed on the Australian Stock Exchange.

Market background

12. Manufactured steel products can be broadly divided into three categories:

- (i) long products – including structurals, rails and sleepers, rod and bar, and wire;
- (ii) pipe and tube products – in Australia, these are cold-formed from steel coil and include structural pipe and rectangular hollow sections (RHS), oil and gas pipe (also known as linepipe), LiteSteel beams, precision tube and open profiles; and
- (iii) flat products – such as steel plates, sheet and coil (the major Australian manufacturer of flat products is BlueScope).

13. These products can be processed further to produce other steel products. For example, hot-rolled coil and cold-rolled coil are used to make pipe and tube products while bar is processed to manufacture grinding media and both rod and bar are processed to produce steel reinforcing products.

14. Further fabrication, for example fabricating reinforcing mesh, also occurs.

15. Steel products such as some of those mentioned above are also imported into Australia.

16. In some cases (for example, large construction projects), long steel products are delivered directly from manufacturing or processing to the project. However, a substantial amount of products reach the customer through a range of fabrication or distribution channels.

17. Steel distribution businesses supply long and tubular steel products to end customers. Typically, large volumes of steel products are shipped from manufacturing mills to large regional distribution points. These regional centres may supply smaller distribution outlets which service local customers. OneSteel and Smorgon both have long and tubular steel distribution businesses which compete with each other and other

independent distribution businesses. Some of these independent distribution businesses are supplied by OneSteel and Smorgon; others rely mainly on imported products.

Market inquiries

18. The ACCC has conducted market inquiries with a range of interested parties, including suppliers, customers and competitors of the merger parties. The ACCC notes that a number of market participants expressed significant concerns about the proposed acquisition.

Areas of overlap of operations of OneSteel and Smorgon

19. OneSteel and Smorgon consider that in several areas there is limited or no overlap between their respective entities.

20. Smorgon does not produce the following products:

- Wire rope;
- Open profiles;
- Oil and gas pipe;
- Precision tube; and
- Steel rail tracks and sleepers.

21. In addition, there is no overlap between OneSteel and Smorgon for the supply of forged/cast products (rail wheels, rail axles, anode/cathode bars and engineering/forging products).

22. OneSteel does not produce LiteSteel beams, while Smorgon does. LiteSteel beams are manufactured from hot-rolled coil and used in applications such as domestic construction and light commercial construction.

23. The main areas of overlap submitted by OneSteel are:

- One type of hot rolled structural – 150 Parallel Flange Channels;
- Rod and bar, including:
 - Certain flats, angles, channels and rounds of merchant bar made to Australian Standard AS3798.1 Grade 1; sections in international engineering grade K 1045;
 - Reinforcing rod and bar sections manufactured to Australian Standard AS4671 Grade 500;
 - Bar sections used in the manufacture of roof bolts; and
 - Bar in sections suitable for grinding media;
- Structural pipe and rectangular hollow sections (RHS) such as:

- 20x20 to 250x250 RHS (manufactured to Australian Standard AS1163),
 - 20NB to 150NB CHS (manufactured to Australian Standard AS1074 or AS1163),
 - a range of shaped sections; and
 - specialised products such as silo sections and yard rail sections.
- Wire (including bright and galvanised wire working, wire in concrete products and chainmesh, but not wire rope which Smorgon does not produce); and
 - Reinforcing products and accessories comprising processed and unprocessed reinforcing bar and mesh; a range of non-structural mesh; and mesh for mining applications. Manufactured to Australian Standard AS4671 Grade 500.
24. In those areas where overlap occurs between OneSteel and Smorgon products, OneSteel argues primarily that the volume, price, frequency and reliability of imports would impose a competitive constraint on the conduct of the merged entity (i.e. on the combined OneSteel/Smorgon companies and businesses post merger). For example, OneSteel has advised the ACCC that there are several steel mills in Asia and elsewhere that regularly supply the Australian industry with feedstock for long steel products and have established downstream processing and distribution operations in Australia.
25. In addition OneSteel argues that there are, in each product category, actively competitive local buyers, processors and distributors able to source imported feedstock, semi-finished or finished independently, at prices, quality and quantity sufficient to constrain the merged entity on a sustainable basis.
26. OneSteel also considers that the proposed undertakings (available at www.accc.gov.au) deal appropriately with the issues of competition in downstream distribution and with OneSteel providing the ACCC an appropriate opportunity to discuss any proposed anti-dumping application before it is made, including as to it being a bona fide application.
27. The ACCC invites comment (preferably supported by examples and quantitative data) by market participants on the above arguments both in general and in their responses to the specific concerns in relation to specific product categories and markets identified in this Statement of Issues.

Statement of issues

28. For the purpose of this Statement of Issues, the issues in this matter are divided into three categories: 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to pose concerns'.

Issues of concern

Reinforcing bar, rod and mesh

29. The ACCC has formed the preliminary view that imports of steel reinforcing products may not be a competitive constraint on domestic steel reinforcing suppliers due to:

- quality and service requirements;
 - longer lead times;
 - transport and storage costs;
 - difficulties gaining market acceptance of imported products; and
 - difficulties in getting imported products that meet the Australian Certification Authority for Reinforcing Steel (ACRS) standard which is said to be a de-facto industry pre-requisite for supply to many major projects and customers (e.g. government contractors and large construction companies).
30. The ACCC is aware of firms who import steel reinforcing products which are said to be of a similar quality and standard to those produced by OneSteel and Smorgon. The ACCC seeks market comment (supported by examples and quantitative data) addressing the arguments that the number of importing firms and the volumes that they currently import (or could import) either are or are not sufficient to pose a competitive constraint on the merged entity in reinforcing markets around Australia.
31. In addition to concerns relating to the ability of imports to constrain the merged entity, the ACCC has concerns regarding the potential for downstream competition in reinforcing markets to suffer as a result of the proposed acquisition.
32. Since the merged entity will be vertically integrated through all stages of steel reinforcing, it is likely to possess a significant advantage over its downstream reinforcing rivals as it will be both a supplier of reinforcing products and a competitor in providing reinforcing services. This concern may be exacerbated given the concerns that exist with respect to the ability of imports of reinforcing products to act as a competitive constraint on the merged entity.
33. In particular, the ACCC understands that the supply of reinforcing bar products is often specific to the requirements of particular construction projects and is accompanied by the provision of sophisticated reinforcing engineering services. Such services rely on computer software programs and expertise in devising building and construction solutions and require significant investment of time and money in the recruitment, development and reputation of engineering expertise, the installation and acceptance of design systems and the continued adaptation of such systems and services to different products and projects.
34. Both OneSteel and Smorgon have long established engineering services, expertise and systems such that the merged entity may have a significant advantage in its ability to tender for, win and service projects or contracts, over importers, smaller rivals (who may or may not use similar systems) and new entrants.
35. On the other hand, the ACCC has been advised of a number of medium to large construction contracts won (in competition with OneSteel or Smorgon) by independent reinforcing businesses using imported product, including road, rail and building contracts. In addition it may be possible for such importers or suppliers to acquire or

team up with local engineering expertise to develop and deliver competitive support services.

36. The ACCC invites comment and explanation as to whether or not the concerns in relation to reinforcing feedstock, products, imports and engineering services are warranted and, if so, whether or not the undertakings proposed by OneSteel in relation to distribution would be sufficient to remedy those concerns. The proposed undertaking in relation to distribution is discussed further at paragraph 51 of this Statement of Issues.

Grinding media for mineral extraction

37. The ACCC has concerns in relation to the grinding media market. Several parties have expressed concern that the merged entity would be both a major supplier of grinding media in Australia, and the only domestic manufacturer and supplier of steel bar, which is an important input into the manufacturing of grinding media. The ACCC has concerns that this may result in an incentive for the merged entity in its capacity as the only domestic supplier of rod and bar, to disadvantage its downstream customer/competitors in the manufacturing of grinding media.
38. In addition the ACCC seeks further comment on concerns that imports of bar for grinding media may not be an effective substitute for domestically produced bar due to inferior quality, longer lead times, lack of interest in the Australian market and unreliable access to supply. The ACCC also understands that there are logistical difficulties in transporting grinding media due to their weight and shape. On the other hand, the ACCC has been advised of instances where bar for grinding media of suitable quality has been imported from South Africa, Korea and China and there have been competitively priced imports of finished grinding media.
39. Hence the ACCC seeks to resolve its concerns that imports of either bar for the manufacture of grinding media or finished grinding media products are unlikely to act as a competitive constraint on the supply of bar for grinding media or on the market for grinding media.

Scrap metal

40. The ACCC has concerns in relation to the acquisition and supply of scrap metal (in particular, cold ferrous feed) in New South Wales (NSW). Several parties have expressed concerns that there will be a reduction in the number of purchasers of processed scrap from two (OneSteel and Smorgon) to one (the merged entity). The ACCC has concerns that this will result in the merged entity having the capacity and incentive to exercise market power as the sole buyer of raw scrap as well as having the incentive to favour its own raw scrap collection operation (formerly owned by Smorgon) over other suppliers.
41. The ACCC also notes that OneSteel is currently responsible for sourcing processed scrap metal on behalf of BlueScope, Tyco and Bradken in addition to OneSteel's operations, through a bidding and sourcing mechanism commonly known as the 'scrap pool'.

42. The ACCC is concerned that the impact of the merger on the operation of the scrap pool is that sellers of processed scrap to the scrap pool may be foreclosed or disadvantaged because the only entity purchasing processed scrap will be the merged entity which will purchase on behalf of the scrap pool and its own operations (the combined OneSteel and Smorgon manufacturing and mills). Similarly, the ACCC wishes to assess whether or not (and in what ways) some or all of the buyers of scrap metal from the pool might be disadvantaged by the merger.
43. Further, the ACCC has concerns that exporting scrap may not be a viable alternative to selling processed scrap domestically in NSW. The ACCC understands that scrap metal prices are benchmarked to export parity and, while processed scrap can be exported from most Australian states, there have been no or few exports of processed scrap from NSW because the relevant NSW port facilities are inoperative. Hence suppliers of raw and processed scrap metal will have minimal bargaining power when dealing with the merged entity as a buyer of processed scrap or as manager of the scrap pool.
44. The ACCC invites comment on whether or not the above concerns are warranted and on the likely effect on acquisition prices to, and supply prices from, the scrap pool post merger. Specifically, the ACCC invites quantitative responses on how much scrap prices in NSW would have to fall to encourage suppliers of scrap metal to seek markets offshore.
45. The ACCC would welcome views on whether or not, post merger, processors and sellers such as Sell & Parker or Sims, would be able to use or devise an alternative means to supply scrap metal, if dissatisfied with the operation of the scrap pool or by the conduct of scrap metal acquisition by the merged entity. Additionally, the ACCC seeks views as to whether or not buyers from the scrap pool such as BlueScope, Tyco or Bradken would be able to exercise countervailing power or otherwise would be able to use or devise an alternative means to purchasing scrap metal, should they so choose.

Steel distribution

46. The ACCC has concerns in relation to steel distribution. In particular, following the acquisition, the merged entity will be the largest manufacturer of rod and bar, pipe and tube, wire and reinforcing products in Australia and as a result, is likely to have the incentive and ability to favour its downstream distribution business over competing distribution businesses. OneSteel have submitted that they will be competitively constrained in this regard by the supply of imports to independent distributors and directly to end customers.
47. The ACCC is concerned that imports of rod and bar, pipe and tube, wire and reinforcing products do not cover the full range of products that are domestically produced and, in many cases, those products that are imported are said to be of inferior quality and not fit for the same purposes as domestically produced products.
48. The ACCC also has concerns that the significant lag-time and logistical difficulties in sourcing imported product, coupled with the uncertainty with respect to continuity of supply, may significantly inhibit the ability of imports to act as a competitive constraint on the merged entity in terms of supply to third party distributors.

49. The ACCC invites informed responses (preferably supported by quantitative data and analysis) that demonstrates that the range, quality issues, lead times and logistics of importing different long steel products either would or would not result in significant, ongoing restrictions that diminish the capacity of such imports to act as an effective competitive constraint on the merged entity.
50. In addition, the ACCC seeks comment on the argument that many imported products (e.g. reinforcing rod and bar; structural pipe and tube) comply with European and other overseas industry standards and as such are eligible for import into Australia because they are able to comply thereby with Australian standards and customer requirements.
51. Respondents to the above issues on distribution are encouraged to respond to the issues canvassed later in this Statement of Issues (at paragraph 82) in relation to the likelihood of portfolio effects whereby the merged entity may be capable of exercising market power or foreclosure across a range of long steel products through pricing, tying or bundling.

Proposed Undertakings in relation to Distribution

52. OneSteel has provided the ACCC with draft s87B undertakings which include a provision that, following the acquisition, OneSteel will demerge the Smorgon steel distribution businesses (see paragraph 6 above). However the demerger proposal does not include the following manufacturing and processing divisions within the Smorgon distribution businesses:
- pipe and tube manufacturing;
 - some regional reinforcing businesses;
 - Smorgon Steel Colour Coaters (formerly Australian Colour Coaters); and
 - LiteSteel beam manufacturing.
53. OneSteel intends to retain these businesses, and will relocate them to its manufacturing, reinforcing and distribution divisions before the proposed demerger takes place.
54. Market responses so far have identified significant concerns with regard to the likely ability and incentive (or lack thereof) of the demerged Smorgon Distribution business to source products and services from either imports or suppliers other than OneSteel, instead of being reliant on OneSteel as the major or only domestic supplier. In addition, there are concerns that, post demerger, there will be strong incentives for the demerged Smorgon Distribution business to either not compete aggressively for customers and contracts; or to act in tandem with the OneSteel supply and distribution businesses in terms of product range, services, pricing, terms and conditions of supply or other forms of price and non-price competition in particular markets.
55. The ACCC has formed a preliminary view that the provisions of the proposed undertaking relating to the demerger of Smorgon Distribution appear to be inadequate to alleviate the range of competition concerns identified in this Statement of Issues. At this point of time the ACCC has not formed a view as to whether or not any alternative demerger or divestiture proposal would be sufficient or workable to address

competition concerns but wishes to hear from the market on what has been so far proposed and what might be considered to address the concerns so far identified.

56. Accordingly the ACCC seeks comment as to whether or not any form of structural or other measures in the proposed undertakings can be devised to address the competition concerns discussed above in relation to the proposed demerger or in relation to issues and concerns raised elsewhere in this Statement of Issues.

Issues that may raise concerns

General concerns regarding market structure and imports

57. The ACCC considers that there is potential for concerns in relation to a range of markets arising from the degree and extent of concentration in manufacturing, processing and fabrication as a result of the merger and in light of high barriers to entry, limited access to domestic inputs (e.g. ore and scrap), long term supply arrangements and uncertainty, customer and project contracts, preferential supply to distributors, and the effect of vertical integration on the merged entity's incentives as a supplier.
58. In general, the ACCC considers that there is potential for concern in relation to the ability of imports to act as a competitive constraint on the merged entity in a range of markets. While the ACCC is aware that it is possible to import most types of steel products, information presented to the ACCC suggests that in many cases, these imports tend to be highly commoditised, often lower quality steel products, in contrast to a range of high grade and/or specialised products fit for certain end-use applications which can only be effectively sourced from domestic manufacturers. The ACCC notes that this seems to reflect a high degree of discontinuity of supply and/or minimal technical and economic substitution in end-user demand. The ACCC has concerns that in many cases, the only sources of steel products which are required for some purposes are either OneSteel or Smorgon and in future the only domestic source will be the merged entity.

Concerns regarding anti-dumping actions

59. Further, the ACCC considers that there is potential for concern in relation to the impact of anti-dumping applications on the ability of imports of steel to act as competitive constraints on the merged entity and, into the future, the merged entity. In particular, the ACCC is cognisant of claims made by several interested parties that historically, anti-dumping applications have been targeted at the mills which were responsible for the export of products in competition with products made by OneSteel and Smorgon in Australia, while OneSteel and Smorgon have continued to import the same products from other mills or other countries which were not subject to the anti-dumping applications.
60. In addition, market responses expressed concern that, post acquisition, the market share of the merged entity across many long steel product categories may mean that anti-dumping applications by any domestic producer will require the support of OneSteel in order to meet Customs requirements that anti-dumping actions represent the overall industry view.

61. The ACCC considers that the draft section 87B undertakings that OneSteel has offered in relation to future anti-dumping applications (see paragraph 6 above) are presently inadequate to alleviate market and competition concerns in relation to the ability of imports to act as a competitive constraint on the merged entity.

62. In particular, the ACCC considers the following questions and issues to be important:

- (i) Will the requirement to obtain a view from the Adviser that the anti-dumping application is “bona fide and is not frivolous or vexatious” simply duplicate an assessment that Customs would make anyway in the course of considering an anti-dumping application and as such adds no greater disincentive (than would otherwise exist, absent the undertaking) for OneSteel to make frivolous or vexatious applications?
- (ii) Is it sufficient that the view of the Adviser is only based on information provided by OneSteel and on consultation with the ACCC, or should there be an opportunity for interested industry parties to comment on the merits of any application?
- (iii) The ACCC invites comment on whether or not a single expert assessing the merits of a proposed anti-dumping application is adequate. What other sources of independent advice would be available to inform the ACCC’s consideration of a proposed application?
- (iv) The undertakings are unclear as to what action is open to the ACCC, should it not concur with the view of OneSteel and/or of the Adviser as to the merits of a proposed anti-dumping action. The ACCC invites comment on what other measures may be required to ensure effective review of a proposed application.
- (v) The ACCC invites comment on whether or not, instead of the anti-dumping proposal in the proposed undertaking, it would be appropriate for the undertaking to include a moratorium on OneSteel making any anti-dumping applications for a certain period following the merger. Please explain why you would support or not support this suggestion.
- (vi) It has been put to the ACCC that, as an alternative to any moratorium on OneSteel making anti-dumping applications, OneSteel give an undertaking that it will be required to indemnify targeted importers, mills and their customers against all loss and damage, including lost opportunity business disruption, in the event an anti-dumping application is unsuccessful. The ACCC invites comment on the merits of this suggestion in light of the likely effect on import competition.

63. In light of the above questions and issues, the ACCC seeks comment on whether or not the anti-dumping provisions of the undertakings could be made more effective in constraining the ability of the merged entity to hinder the entry of competitive imports,

Current Anti-Dumping Application

64. The ACCC is also aware of the anti-dumping action against products imported from China, Korea, Malaysia, Taiwan and Thailand (initiated on 29 March 2006 by OneSteel, Smorgon and Orrcon) currently being considered by Customs.

65. The ACCC seeks comment on whether or not the proposed undertaking would have any impact on the current anti-dumping action relating to hollow structural sections (HSS).
66. Market responses have advised the ACCC that Customs may be required to assess and decide on the current anti-dumping action on the basis of its historical background, irrespective of the proposed acquisition and undertakings.
67. In addition, market responses consider that the application was made at a time when the industry structure which existed was one which would be significantly different to the structure that will prevail in the event that the merger proceeds. There is strong market concern that, should the application be successful and the merger proceed, the ability of imports to act as a competitive constraint on the merged entity is likely to be inhibited.
68. The ACCC seeks comment on whether or not the current application will be effectively covered by the undertakings proposed by OneSteel. If not, what will be the likely effect of anti-dumping measures taken in response to the application (should it be successful) on the ability of imports from those countries to constrain the merged entity?

Steel for mining applications

69. The ACCC considers that there is potential for concerns in relation to the supply of steel (such as steel mesh and bar, and roof bolts) for mining applications. The ACCC has received information which suggests that imports of steel for these purposes may not be a sustainable and competitive constraint on the merged entity due to longer lead times (versus job, batch and/or just-in-time exigencies) and limited availability of imports of special grades of steel and tailor-made products.
70. In addition, it has been submitted that certain types of bar (e.g. debar) have Australian standards or industry requirements (e.g. 500 grade steel) which act as a barrier to imports of that product. Conversely it has been submitted that both the domestic manufacturers and the end customers of steel for mining applications are either international companies or are able to access international markets for feedstock or finished products.
71. The ACCC invites comment from market participants, the mining industry and suppliers of steel products to the mining industry as to whether or not the above concerns are likely to arise as a result of the merger and whether or not imports, alternative sources of supply and/or the countervailing power of end users would be able to constrain the merged entity.

Pipe and tube

72. The ACCC considers that there is potential for concerns in relation to steel pipe and tube, in particular with respect to HSS.
73. The ACCC has received information which suggests that imports of HSS may not be a competitive constraint on domestic manufacturers of HSS (and specifically the merged entity) because the majority of imports of HSS are for non-structural applications which meet a different Australian Standard to the HSS used for structural applications. For example, the Australian Standard or industry requirements for some structural sections

(500 megapascals (or MPa)) is said to be different to structural standards for steel overseas (typically 460MPa), making the latter unsuitable for Australian requirements.

74. The ACCC is also assessing the extent to which other structural long products are technically and economically substitutable for structural hollow products and would welcome any further information in this regard, especially on the extent to which the availability of such products might constrain the merged entity in its supply and pricing of structural sections.

75. In addition, the ACCC wishes to receive further information on the following areas where concerns have been raised in specific end markets:

- (i) structural sections used in building and housing construction;
- (ii) sections used in machinery manufacturing eg 350-400 grade RHS; and
- (iii) the value and competitiveness of OneSteel and Smorgon brands (for example, DuraGal®, GalTube® and DualGrade® and the ability of generic or lesser known brands to compete with the brands to be owned by the merged entity.

76. In addition, as noted earlier, the ACCC seeks comment on the argument that many imported products (e.g. reinforcing rod and bar; structural pipe and tube) comply with European and other overseas industry standards and as such are eligible for import into Australia because they are able to thereby comply with Australian standards and customer requirements.

Wire products

77. The ACCC considers that there is potential for concerns in relation to steel wire and wire products. Several parties have expressed concern that imports of feed wire and wire products are not a competitive constraint on domestic suppliers of wire due to:

- longer lead times;
- variable quality; and
- uncompetitive pricing.

78. Issues have also been raised regarding the increased dependence of wire product manufacturers, fabricators, distributors and retailers on the merged entity as the dominant domestic supplier.

79. In particular, concerns have been raised that Smorgon is a vigorous competitor in the supply of feed wire to manufacturers of wire products including wire fencing in terms of lead times, ordering systems and payment arrangements and that these advantages and the competitive tension between OneSteel and Smorgon may be lost post merger.

80. OneSteel will also own two well-recognised brands (Waratah® and Cyclone®) possibly making it more difficult for other suppliers to establish or increase brand awareness and for distributors to access these brands separately should OneSteel bundle its offering.

81. In addition, concerns have been raised that the merged entity will be vertically integrated into the supply of rural products made from wire, which could place it in a position to disadvantage its competitors in the supply of wire products to the retail sector by denying them supply or significantly raising prices of the key input.

Issues that are unlikely to raise concerns

82. The ACCC considers that the proposed acquisition is unlikely to raise competition concerns in relation to the supply of the following products, taken on their own:

- (i) Structural long products (such as beams) since Smorgon only produces one type of structural and only accounts for a very small share of the market (much smaller than the shares held by OneSteel and by imports).

The ACCC notes that it is assessing the extent to which structural long products and structural sections are substitutable for one another (see paragraph 71 above) and its findings in this respect may alter its view on this issue.

- (ii) Manufacturing rod and bar (i.e. rod and bar products excluding merchant bar, reinforcing rod and bar and bar for grinding media) since Smorgon only accounts for a very small share of the market (much smaller than the shares held by OneSteel and by imports).
- (iii) Steel rail tracks and sleepers. The ACCC understands that Smorgon does not produce these products.
- (iv) Wire rope. The ACCC understands that Smorgon does not produce this product.
- (v) Open profiles. The ACCC understands that Smorgon does not produce this product.
- (vi) Oil and gas pipe. The ACCC understands that Smorgon does not produce this product.
- (vii) Precision tube. The ACCC understands that Smorgon does not produce this product.
- (viii) Bright bar. The ACCC understands that Smorgon does not produce this product.
- (ix) Coil coating. The ACCC understands that OneSteel does not produce this product.

A further issue that may raise concerns - portfolio effects

83. Several of the above products (as well as those products discussed earlier in this Statement of Issues) are complementary such that some customers including distributors and large end customers tend to purchase a range of products from the one supplier. The proposed acquisition would result in an extension of the range of products offered by OneSteel, which may enable it to leverage any market power it has in one market to increase sales of other products it supplies, to the detriment of competitors and competition.

84. Some market participants expressed concern that the merged entity would be the only supplier capable of supplying the full range and requirements of Australian long steel wholesale and retail customers both directly and through various distribution channels. Specifically, market participants have submitted that the merged entity would be able to:

- (i) Bid for major projects and supply contracts, on the basis of an enhanced balance sheet able to accommodate a greater range of product, project and financial risk and in the absence of Smorgon as a vigorous rival, in a way that other bidders, due to their relative size, are not able to match;
- (ii) Bundle together different products across a wide range of markets, far beyond the capacity of any other domestic producer or importer, to increase the incentives of customers to source all or most of their product from the merged entity;
- (iii) Offer products (along with incentives such as rebates) on a tied or exclusive basis, so customers buy OneSteel products that face competition, as a condition of purchasing premium 'must have' products or products solely made by OneSteel;
- (iv) Cross-subsidise or discount products and/or employ price discrimination strategically to undermine the value in any other competitor's market offering and favour its own production or downstream processing and distribution;
- (v) In support of the above measures, enter into long term arrangements with key customers, sectors or major projects, such that potential domestic rivals or importers cannot secure 'anchor' customers to remain viable competitors.

85. The ACCC invites comment on the future ability of OneSteel to bundle, tie or price its products in a way that forecloses customers and therefore raises rivals' costs and/or increases the merged entity's sales in particular markets, to the detriment of competition.

Other products

86. The ACCC is conscious that the markets for long steel products are diverse with a variety of suppliers and customers and is aware that the issues outlined in this Statement of Issues may not have identified all the issues of concerns held by different market participants.

87. The ACCC invites information and comment from those market participants who consider that their concerns or views as to the merits of the merger (whether in support or not) have not been adequately or accurately been covered in this Statement of Issues.

ACCC's Future Steps

88. The ACCC has not yet reached a view in relation to its assessment of the proposed merger. The ACCC will finalise its decision on this matter subsequent to considering the further market responses invited by this Statement of Issues.

89. The ACCC now seeks submissions from market participants on each of the issues that have been raised in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter.
90. At this stage, the ACCC anticipates completing its further market inquiries by 23 August 2006. Submissions are to be received by the ACCC on or before that date. The ACCC will consider the submissions received from market participants, including submissions from the parties to the proposed acquisition, in light of the concerns that have been identified and (in conjunction with information and submissions provided by all parties) make a final decision as to the appropriate course of action.
91. The ACCC expects to make its final decision on 6 September 2006. However, the indicative timeline may change in line with the Merger Review Process Guidelines.
92. To kept abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the ACCC's website which contains the Mergers Register. To find the Mergers Register follow the link to "Public Registers" and then the link to "Mergers Register".