



## Statement of Issues

15 August 2019

### Emergent Cold – proposed acquisition of Oxford

#### Purpose

1. Emergent Cold Pty Ltd (**Emergent Cold**) proposes to acquire all of the shares of AB Oxford Cold Storage Company Pty Ltd and AB Oxford Cold Storage Company No 2 Pty Ltd (together, **Oxford**).
2. This Statement of Issues:
  - gives the preliminary views of the Australian Competition and Consumer Commission (**ACCC**) on competition issues arising from the proposed acquisition
  - identifies areas of further inquiry, and
  - invites interested parties to submit comments and information to assist our assessment of the issues.
3. Statements of Issues give preliminary views and do not refer to confidential information provided by the parties or other market participants, therefore they may not be a full articulation of the ACCC's preliminary position.

#### Overview of ACCC's preliminary views

4. The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
5. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'.

#### Issue of concern

6. The ACCC considers, based on market feedback, that Emergent Cold and Oxford are likely to be each other's closest competitors for the supply of cold

storage services in Victoria. The ACCC is concerned that the reduction in number of large third party cold storage providers in Victoria from four to three, and the removal of Emergent Cold's closest competitor, is likely to result in higher prices or lower service levels for the supply of third party cold storage services in Victoria.

## Making a submission

7. The ACCC is seeking submissions from interested parties, particularly on the following key issues:
  - the extent to which existing suppliers of third party cold storage services in Victoria will provide a competitive constraint on the combined Emergent Cold/Oxford, and
  - the height of the barriers to entry or expansion (including the likelihood of new entry from transport logistics operators) and the ability of customers to sponsor new entry or expansion or expand in-house cold storage services.
8. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.
9. Interested parties should provide submissions by no later than 5pm on 30 August 2019. Responses may be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au) with the title: *Submission re: Emergent Cold/Oxford – attention Alison Hill/Andrew Sudol*. If you would like to discuss the matter with ACCC officers over the telephone or in person, or have any questions about this Statement of Issues, please contact Alison Hill on 03 9910 9469 or Andrew Sudol on 02 9230 9119.
10. The ACCC anticipates making a final decision on 7 November 2019. However, this timeline can change. To keep abreast of possible changes in relation to timing and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at [www.accc.gov.au/mergersregister](http://www.accc.gov.au/mergersregister).

## Confidentiality of submissions

11. The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

## About ACCC 'Statements of Issues'

12. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.

13. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

## Timeline

Date	Event
4 June 2019	ACCC commenced informal review under the Informal Merger Review Process Guidelines.
15 August 2019	ACCC publication of Statement of Issues
30 August 2019	Deadline for submissions from interested parties in response to this Statement of Issues
7 November 2019	Anticipated date for ACCC final decision

## The parties

### Emergent Cold

14. Emergent Cold is part of the Emergent Cold Group, a Texas-based cold storage provider that provides cold storage services in Australia, New Zealand, Vietnam and Sri Lanka. Emergent Cold describes itself as the market leader for cold storage services in Australia, with sites in Victoria, New South Wales, South Australia and Western Australia. Emergent Cold's Victorian sites are in Laverton, Allansford, Truganina, Lyndhurst and Tullamarine.
15. Emergent Cold supplies cold storage services that include chilled and frozen storage, cross-dock order picking, associated logistic services, consolidation and import/export management assistance. Emergent Cold also operates a fleet of refrigerated vehicles and trailers that supply refrigerated transport services in Australia.
16. Emergent Cold entered into Australia in late 2017, through its acquisition of the cold storage business of John Swire & Sons, Swire Cold Storage. It expanded in late 2018 by acquiring Montague Cold Storage.

### Oxford

17. Oxford has a single cold storage facility in Laverton North, Victoria.
18. Oxford supplies frozen and chilled storage and handling services that include blast freezing, chilled and frozen storage and associated services which include pick/pack, wrapping, labelling, supplier-integrated inventory management through electronic data interchange and full product tracking and recall.

## Industry background

### Overview

19. Cold storage facilities utilise specialty warehouses equipped with large-scale freezers and/or cool rooms for the storage of temperature-sensitive products. These temperature-sensitive products are kept in cold storage facilities while they await delivery or export to their final point of sale.
20. Goods typically requiring cold storage are:
  - a. for imported goods – after they are imported into Australia, prior to their distribution to domestic customers
  - b. for exported goods – before they are exported out of Australia, or
  - c. for goods that are manufactured domestically – for storage of these products as they are distributed from their manufacturing facility to retailer storage facilities or to individual retail outlets.
21. There are various licensing requirements for cold storage providers. The exact requirements for each operator depend on the goods being stored, and whether those products have been imported, or are due to be exported. Third party cold storage services providers may also provide customers with a range of ancillary services, including:
  - a. pick/pack, in particular, picking of individual cartons within a pallet for distribution in sub-pallet quantities of goods
  - b. using the inventory management IT system at a cold storage facility to coordinate the distribution, tracking and recall of goods from the facility, using the cold storage facility as a distribution centre
  - c. wrapping and labelling services, and
  - d. services that are specific to the requirements of the goods being stored – for example, allowing for the aging of cheese within particular chambers.

### Customers of cold storage services

22. Customers of third party cold storage services are typically food manufacturers, exporters, importers, logistics providers, or retailers. Goods that typically require cold storage include dairy products, seafood, raw and cooked meat, poultry, frozen vegetables and other frozen or chilled foods.
23. Different customer groups have different needs regarding the way their products are distributed and in what quantities. Some customers of cold storage services distribute their goods in whole pallets, whereas other customers distribute their goods in cartons which requires picking individual cartons from stored pallets which are then repackaged and sent back into cold storage. Picking individual cartons from pallets requires dedicated areas at cold storage facilities.
24. Different customer types also require storage of pallets for different lengths of time. Retailers, for example, have very fast moving goods with a very high turnover of pallets where some goods may be stored for less than a day. Other

customers, such as manufacturers, may require cold storage to store goods for longer periods of time before they are distributed (for example: dairy products are subject to seasonal fluctuation in production, which is not necessarily matched to demand so goods are stored before they are distributed).

25. Food manufacturer customers of cold storage services often have some cold storage capacity at their manufacturing facility to store chilled or frozen goods. Large retailer customers of cold storage services also have access to in-house cold storage services for chilled or frozen goods or both. Other customers (e.g. importers or exporters) do not necessarily have access to any of their own cold storage facilities.

## The proposed transaction

26. On 28 May 2019, Emergent Cold announced that Emergent Cold and Oxford had signed an agreement under which Emergent Cold would acquire Oxford. Under the agreement, Emergent Cold will acquire Oxford's cold storage business which involves operating the cold storage facility located at Hume Road in Laverton North, Victoria.<sup>1</sup>

## Market definition

27. The ACCC's starting point for defining relevant markets to assess the competitive effects of the proposed acquisition involves identifying the products actually or potentially supplied by the merger parties. The ACCC then considers other actual or potential suppliers of those products, as well as what other products constitute sufficiently close substitutes to provide a significant source of constraint on the merged entity.
28. Emergent Cold and Oxford overlap in the supply of third party cold storage services in Victoria.
29. The ACCC understands that customers typically acquire cold storage services separately in different states (or in different regions within states) and that very few customers acquire cold storage services from a single provider nationally. Further, cold storage provided in other states is not a strong substitute for cold storage services provided in Victoria.
30. Accordingly, the ACCC's preliminary view is that the market for assessing the competition effects of the proposed acquisition is a market for the supply of third party cold storage services in Victoria.

The ACCC invites comments from market participants on its preliminary views about the definition of the relevant market. In particular market participants may wish to comment on:

- Do customers in Victoria acquire cold storage services for different regions within Victoria or for particular cities?

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<sup>1</sup> The proposed transaction does not include the buildings or land comprising the Laverton North facility, which are leased by Oxford.

- To what extent can customers change states in which they acquire cold storage services?
- To what extent can customers redistribute goods from cold storage facilities in one state to cold storage facilities in another state?
- Do customers' cold storage requirements vary depending on their size and their products?
- Does the extent to which customers' can switch suppliers vary depending on their size and their products?

## Issue of concern

31. Based upon its inquiries to date, the ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition because:
- a. it would consolidate a significant proportion of Victorian third party cold storage capacity under Emergent Cold's control
  - b. it would remove Emergent Cold's closest competitor for the supply of cold storage services in Victoria
  - c. it would reduce the number of large suppliers of cold storage services in Victoria from four to three
  - d. existing suppliers of cold storage services in Victoria are unlikely to sufficiently constrain a combined Emergent Cold/Oxford post-acquisition, and
  - e. barriers to entry or expansion are likely to be high and very few customers are likely to be able to sponsor new entry or expansion or to satisfactorily self-supply cold storage services in-house.
32. The ACCC considers that competition in the supply of cold storage services takes multiple forms. In the short term, firms compete through price and service level competition, based on their existing capacity. Over the longer term, as overall demand for cold storage increases, suppliers also expand their capacity as they compete to win new business.
33. The ACCC is concerned that the proposed acquisition would impact both aspects of this competition:
- a. it would immediately reduce the competitive constraint faced by Emergent Cold, and
  - b. it may create the ability and incentive for Emergent Cold to limit future expansions in its capacity, or perhaps reduce its existing capacity (e.g. by closing one of its existing smaller Victorian facilities and consolidating its storage across its remaining sites), leading to tighter supply conditions in the future,

resulting in increased prices or decreased service levels to customers.

The ACCC invites comments from market participants in relation to Emergent Cold's ability and incentive to reduce or limit available cold storage capacity. In particular, market participants may wish to comment on the following:

- What is the likely effect of decreasing available cold storage capacity in Victoria on prices or on service quality?
- To what extent would the proposed acquisition affect Emergent Cold's ability or incentive to limit future capacity growth, or reduce existing capacity, in cold storage in Victoria?

### Suppliers of cold storage services in Victoria

34. There are four large non-integrated third party providers of cold storage facilities (**large cold storage providers**) in Victoria:
- a. Emergent Cold (as noted above) operates five facilities
  - b. Oxford (as noted above) operates one facility in Laverton North
  - c. NewCold operates two facilities in Truganina, and
  - d. Americold operates one facility in Laverton North.
35. **Table 1** below sets out the approximate percentage of cold storage capacity in Victoria provided by Emergent Cold, Oxford, NewCold, Americold, and collectively other cold storage services providers. It excludes the cold storage capacity held by customers, because of its limited constraint on the large cold storage providers which is discussed in further detail below.

**Table 1: approximate shares of cold storage capacity in Victoria**

Cold Storage Provider	Share of Victorian third party cold storage capacity	Share of Victorian third party cold storage capacity (excluding transport companies and smaller operators)
Oxford	18-20%	26-28%
Emergent Cold	18-20%	26-28%
Combined Emergent Cold/Oxford	35-40%	52-56%
NewCold	25-30%	35-40%
Americold	5-7%	7-10%
Other smaller cold storage services providers (combined)	28-32%	Not applicable

36. As shown in Table 1 above, the top four providers of cold storage services (Emergent Cold, Oxford, NewCold and Americold) account for approximately 70

per cent of third party cold storage capacity in Victoria. The combined Emergent Cold / Oxford would hold approximately 35 – 40 per cent of third party cold storage in Victoria. If transport companies and smaller cold storage providers are excluded from the market shares (see discussion below about the extent of constraint from these providers) this figure increases to 52 – 56 per cent.

### **Closeness of competition between Emergent Cold and Oxford**

37. The ACCC considers, based on market feedback, that Emergent Cold and Oxford are likely to be each other's closest competitors for the supply of cold storage services in Victoria for a number of reasons, including:
- a. they are two of the largest non-automated or semi-automated cold storage service providers in Victoria, which gives them greater scope to store products that smaller cold storage facilities are unable to accommodate
  - b. they both operate cold storage facilities that involve some manual handling, which provides greater flexibility in the types of goods that they are able to handle and store. In contrast, fully-automated cold storage facilities are more limited in their ability to store partial or irregular pallets
  - c. they both provide cold storage services to similar customers across a number of the same product types with similar cold storage requirements (e.g. medium sized food manufacturers in the dairy, meat and seafood industries and food importers).
  - d. they both meet the necessary licensing requirements to deal with imports (including accepting goods that require biosecurity inspections at the cold storage facility), exports, dairy accreditation and general food accreditation
  - e. they both offer a similar range of ancillary services such as pick/pack services, wrapping and labelling services, allowing customers access to part of a pallet, pallet repackaging, inventory management, and integration with other logistics solutions.
38. The ACCC considers that Emergent Cold and Oxford provide cold storage services to similar customers. These groups of customers are likely to be particularly affected by the proposed acquisition, because in many cases their products do not suit NewCold's highly-automated facility or Americold's small, high-turnover facility, but whose cold storage services needs are too large or complex to be met by smaller suppliers.
39. Therefore, the ACCC is concerned that the proposed acquisition is likely to result in the removal of Emergent Cold's closest competitor and that the remaining large cold storage providers are unlikely to provide a sufficient competitive constraint to Emergent Cold/Oxford. The degree to which other providers of cold storage services compete with Emergent Cold and Oxford for these customers is discussed in further detail below.

The ACCC invites comments from market participants on its concerns in relation to the closeness of competition between Emergent Cold and Oxford. In particular, market participants may wish to comment on the following:

- To what extent do Emergent Cold and Oxford service similar customer requirements, including the contract volumes, types of products stored and service

levels and pricing offered (and to what extent can their customers switch to another cold storage services provider)?

- Do Emergent Cold and Oxford provide different services, or service levels, compared to other cold storage providers?

#### **Constraint imposed by NewCold**

40. NewCold is the largest cold storage provider in Victoria (by capacity), with two buildings in Truganina. NewCold's warehouses are highly automated and it services a relatively small number of large customers (including Fonterra, McCain, and Peters Ice Cream).
41. The ACCC understands that NewCold's entry to the cold storage services market in Victoria was underwritten by entering into long-term contracts with its major customers. Some market participants have indicated that they consider that NewCold is at capacity and has limited ability to take on new customers.
42. The ACCC understands that highly-automated systems may not meet the requirements of all customers who require cold storage services. Market feedback indicates that NewCold's facilities are best suited to customers distributing whole pallets rather than customers who require picking of individual cartons. While NewCold can accommodate some pick/pack services at its facilities, market feedback indicates that the facility's design and automation cannot accommodate high volumes of pick/pack services or pallet repackaging services. These services are highly valued by customers of Emergent Cold and Oxford. Automated facilities also have very particular standards for the presentation of pallets at their facilities, because any deviation in size, stacking of the cartons, or loose wrapping can interfere with the automated services at the facility.
43. The ACCC considers that NewCold is likely to provide some constraint to the combined Emergent Cold/Oxford post-acquisition, but is not as close a competitor to Emergent Cold and Oxford as the parties are to each other.

#### **Constraint imposed by Americold**

44. Americold is a cold storage provider with one cold storage facility in Victoria located in Laverton North (in addition to other cold storage facilities in other states). Americold is the smallest of the four large cold storage providers in Victoria in terms of capacity.
45. Americold services large retail customers from its Laverton North facility, which is designed to suit high-turnover goods that move in and out of the warehouse quickly. Americold provides services to smaller non-retail customers but its focus is supplying large retailer customers with high-turnover products.
46. The ACCC considers that Americold is likely to provide some constraint to the combined Emergent Cold/Oxford post acquisition, but its focus on high-turnover products and major retailers means that it is not as close a competitor to Emergent Cold and Oxford as they are to each other.

### **Constraint from other suppliers of cold storage services**

47. As set out above at Table 1, approximately 30 per cent of Victorian third party cold storage capacity is held outside of the four large suppliers. This 30 per cent consists of two types of suppliers – transport companies and small suppliers.

#### *Transport companies*

48. Transport companies such as Linfox, Toll and AHG have some cold storage capacity in Victoria which they typically provide as an integrated offer that bundles transportation services along with cold storage capacity that is ancillary to the transport of goods.
49. Market feedback indicates that the supply of cold storage services by transport companies is typically focussed on the short-term supply of cold storage services for goods that are in transit. Transport companies typically supply cold storage services to customers that are also acquiring transport services from that transport provider.
50. To the extent that transport companies do compete with the major suppliers of cold storage services in Victoria, this appears to be for a small number of customers rather than of a sufficient scale capable of constraining the pricing and service levels of Emergent Cold and Oxford post-acquisition.

#### *Other suppliers of cold storage services*

51. There is also a considerable number of smaller providers of cold storage services in Victoria. However, the ACCC considers that these smaller suppliers of cold storage services:
- a. lack sufficient capacity to effectively compete for the customers of Emergent Cold and Oxford
  - b. do not (and cannot) provide the logistical support and integration with customers' existing logistics supply chain
  - c. do not offer the same range of ancillary services (such as repackaging pallets, inventory management) that are offered by the large cold storage services providers
  - d. often lack the necessary licensing to comply with certain domestic, import or export regulations, including lacking the ability to accommodate quarantine inspections, or
  - e. operate less efficient or aging cold storage equipment that is unable to meet the needs of customers with different cold storage requirements.
52. Market feedback indicates that many customers do not consider that smaller suppliers of cold storage services in Victoria compete closely with Emergent Cold or Oxford. Instead, these smaller suppliers tend to supply cold storage services to smaller customers with simple requirements. When these smaller suppliers provide cold storage services to larger or more complex customers this is typically only as an overflow facility when customers are not able to get sufficient capacity at one of the large cold storage service providers.

53. In light of the above, the ACCC considers that smaller suppliers are unlikely to be a suitable alternative for customers with larger capacity requirements or more complex operations that require licensing, logistical support and other services. These smaller suppliers are therefore likely to pose limited competitive constraint on the large cold storage services providers.

The ACCC invites comments from market participants on the competitive constraint on Emergent Cold/Oxford from other cold storage providers. In particular market participants may wish to comment on the following:

- To what extent can and do customers change between cold storage providers, including between providers with different service levels or models or capacity?
- To what extent would Americold and NewCold compete with a combined Emergent Cold/Oxford, including with regard to the services and business models they operate and availability of capacity?
- To what extent are transport operators able to compete for any customers of Emergent Cold or Oxford (and for which types of customers or services)?
- To what extent are smaller providers of cold storage in Victoria able to compete for any customers of Emergent Cold or Oxford (and for which types of customers or services)?

#### **Barriers to entry**

54. The ACCC considers that it is likely that the barriers to entry or expansion are high for the supply of cold storage services in Victoria.
55. The ACCC understands that the relevant barriers to entry or expansion for cold storage service in Victoria include:
- a. purchasing or leasing land or facilities in an area that is proximate to other logistics businesses or ports, as cold storage services form part of the logistics supply chain
  - b. the largely irreversible ('sunk') costs involved in building a facility designed for cold storage, including purchasing chilling and freezing equipment, and specialty racking. Any automation of the cold storage facilities require further substantial costs for the purchase of automated equipment and associated software
  - c. setting up IT systems that allow for inventory management and tracking of customers' products stored at the cold storage facility
  - d. the difficulty in securing a specialised work force capable of working at very low temperatures, operating a facility continuously or near-continuously (including on weekends), and maintaining the facility so that any potential equipment malfunctions can be fixed without the temperature ranges of the entire facility being affected, and
  - e. the need to obtain relevant licences and approvals that allow a facility to store particular types of food, or allow for food to be imported or exported.

*NewCold's entry in 2017*

56. NewCold's entry into providing cold storage services in Victoria in early 2017 increased total Victorian cold storage capacity by approximately 200,000 pallets.<sup>2</sup> The ACCC is aware that, following NewCold's entry, some customers experienced a period in which they were able to acquire additional cold storage capacity at reduced rates.
57. However, market feedback indicates that the additional capacity created by the entry of NewCold into Victorian cold storage services has now been taken up by customers and that prices for cold storage have increased since NewCold's entry. The initial impact on pricing that followed NewCold's entry may also indicate that existing cold storage providers were not strongly constrained by the threat of new entry prior to NewCold's entry.
58. Other than NewCold, there are few examples of new entry in cold storage facilities in Victoria. Emergent Cold entered in Victoria through the acquisitions of Swire Cold Storage and Montagues Cold Storage rather than through organic growth or expansion.
59. Notwithstanding NewCold's entry in 2017, market feedback indicates that there has been a lack of available cold storage capacity in Victoria in recent years. The ACCC considers that in circumstances where there has been consistent lack of available capacity and no further new entry or expansion by existing providers of cold storage services, it is likely that barriers to entry are significant.

*Customers' ability to sponsor new entry or expansion*

60. The ACCC considers that while some of the largest customers are likely able to sponsor new entry or expansion of cold storage facilities, this is unlikely to provide an adequate constraint to the combined Emergent Cold/Oxford.
61. Some customers of cold storage services have the ability to sponsor new entry or the expansion of an existing cold storage service provider. For example, the ACCC is aware that Woolworths has signed a non-binding Letter of Intent with Americold for Americold to design, build and operate a network of three automated distribution centres in Brisbane, Melbourne and Sydney. The lease agreements and warehouse service agreements are expected to each have an initial term of twenty years.<sup>3</sup> As noted above, NewCold's entry was also underwritten by entry into long term contracts with large customers such as Fonterra, McCain and Peters Ice Cream.
62. However, the ACCC considers that customer sponsorship is only likely to be a viable option for a small number of the largest customers in Victoria (such as major supermarket chains). Therefore, the threat of sponsored entry or expansion is unlikely to be sufficient to constrain the combined Emergent Cold/Oxford in the supply of cold storage services to the majority of its customers. The ACCC continues to explore this issue.

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<sup>2</sup> The Sydney Morning Herald, '[Inside Australia's biggest fridge and freezer](#)', 24 November 2018.

<sup>3</sup> <https://www.sec.gov/Archives/edgar/data/1455863/000119312518270882/d598063d8k.htm>, accessed on 22 July 2019.

The ACCC invites comments from market participants in relation to barriers to entry or expansion, and the ability of customers to sponsor new entry or expansion. In particular, market participants may wish to comment on the following:

- Have you considered entry or expansion in cold storage services in Victoria? What were the options and key challenges?
- Have you considered sponsoring entry or expansion? What were the options and key challenges?
- What is the minimum size and scale for a customer of cold storage services to be able to sponsor new entry or expansion in Victoria?
- What is the minimum term of contract that a customer of cold storage services would need to agree to in order to sponsor new entry or expansion in Victoria?
- Why has the lack of available cold storage capacity in Victoria not been met by new entrants or expansion of existing facilities? Is the lack of new entry or expansion related to the price that customers are willing to pay for cold storage services?
- Are there are other suppliers of cold storage in other states, or internationally, that could commence supply in Victoria and how readily these other suppliers could commence supply in Victoria?

**Customers' ability to bypass Emergent Cold / Oxford by building their own cold storage facilities**

63. The ACCC considers that most customers are unlikely to be able to prevent an increase in pricing or a decrease in service levels of Emergent Cold/Oxford's cold storage services post-acquisition by expanding their own in-house supply of cold storage services.
64. Food manufacturer customers of cold storage services typically have some amount of cold storage co-located at their manufacturing facilities to maintain the temperature of any chilled or frozen goods after they are manufactured. This is rarely an alternative to cold storage services and is typically complementary to third party cold storage services.
65. The willingness of customers to consider in-house supply of cold storage services differs from customer to customer. Some customers will only in-house supply the minimal amount of cold storage that is necessary for their manufacturing functions and no more. At the other end of the spectrum, some customers may be able to build larger cold storage facilities that satisfy most of their demand for cold storage services but, due to their fluctuating need for cold storage services and the high cost of running a cold storage facility, will only build a facility that satisfies their base requirements for cold storage.
66. This is because there are typically seasonal fluctuations in the production of goods that require freezing or chilling – for example, demand for ice-cream and seafood increases over summer, and the dairy industry is subject to variations in production throughout the year. For customers that are willing to in-house some of their cold storage facilities, they will in-house their cold storage requirements only to the extent that it covers their base requirements, but will not in-house

sufficient cold storage capacity to cover seasonal peaks. To this extent, they remain dependent on third party cold storage providers such as Emergent Cold or Oxford.

67. Market feedback indicates that customers are generally unwilling to replace third party cold storage facilities entirely by building their own cold storage facilities.
68. The ACCC considers that the threat of customers in-housing their cold storage needs is likely to provide a limited constraint to the combined Emergent Cold/Oxford and that customers are unlikely to be able to viably threaten to in-house all of their own cold storage needs in response to a 5 -10 per cent increase in the price of cold storage services in Victoria.

The ACCC invites comments from market participants in relation to barriers to entry or expansion, and the ability of customers to sponsor new entry or expansion. In particular, market participants may wish to comment on the following:

- For customers of cold storage services in Victoria: have you ever considered expanding your existing cold storage facilities or building your own cold storage services? If so, how much of your total cold storage demands would your own facility have satisfied? What were the key challenges you considered or faced in expanding or building your own facilities?
- Are there any examples of customers threatening to build their own cold storage facilities in response to an increase in price? If so, what was ultimately the effect on price?

### **ACCC's preliminary views**

69. In summary, the ACCC is concerned that:
  - a. the proposed acquisition would consolidate a significant proportion of Victorian third party cold storage capacity under Emergent Cold's control
  - b. the proposed acquisition would remove the closest competitor to Emergent Cold in the supply of cold storage services in Victoria
  - c. the proposed acquisition would decrease the number of large cold storage providers in Victoria from four to three
  - d. Americold and NewCold would not act as sufficient competitive constraints on the combined Emergent Cold/Oxford
  - e. other third party cold storage providers, including transport companies offering cold storage services and smaller cold storage services providers, would not act as sufficient competitive constraints on the combined Emergent Cold/Oxford
  - f. barriers to entry and expansion (including sponsored entry and expansion) are significant and only some very large customers are likely to be able to sponsor new entry or expansion, and
  - g. customers' ability to self-supply cold storage services is unlikely to provide a viable alternative to third party cold storage services or act as a sufficient constraint on the combined Emergent Cold/Oxford.

## ACCC's future steps

70. As noted above, the ACCC now seeks submissions from market participants on the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions are to be received by the ACCC no later than 30 August 2019 and should be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au).
71. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.
72. The ACCC intends to publicly announce its final view by 7 November 2019. However the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement to explain its final view.