Statement of Issues

20 June 2024

Olam Agri Holdings Limited – proposed acquisition of Namoi Cotton Limited

Purpose

1. Olam Agri Holdings Limited (**Olam**) proposes to acquire Namoi Cotton Limited (**Namoi**) (the **proposed acquisition**).

2. This Statement of Issues:

   - gives the Australian Competition and Consumer Commission's (**ACCC**) preliminary views on competition issues arising from the proposed acquisition

   - identifies areas of further inquiry

   - invites interested parties to submit comments and information to assist our assessment of the issues.

3. Statements of Issues do not refer to confidential information provided by the parties or other market participants and therefore may not fully articulate the ACCC's preliminary position.

Overview of ACCC's preliminary views

4. In considering the proposed acquisition, the ACCC applies the legal test set out in section 50 of the *Competition and Consumer Act 2010* (the **CCA**). In general terms, 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'. In this Statement of Issues there are three "issues of concern" and three "issues that may raise concerns."

Issues of concern

6. The ACCC is concerned about a loss in competition for the supply of ginning services in the Namoi Valley region, and particularly the Lower Namoi Valley region, as Olam would operate four of the five gins in this region post-acquisition.

7. The ACCC is also concerned about a loss in competition for the supply of cotton lint classing services, given that post-acquisition, Olam would hold a 20 per cent interest in ProClass Pty Ltd (ProClass) as well as 100 per cent of Australian Classing Services Pty Ltd (ACS).

8. The ACCC is concerned that Olam's increased ginning presence as a result of the proposed acquisition would also provide it with the ability and incentive to frustrate and/or foreclose competing merchants from acquiring and marketing cotton lint and cottonseed. As a consequence, competing merchants' ability to compete with Olam would likely be impacted, resulting in a substantial lessening in competition in the acquisition of cotton lint and cottonseed from growers, and so resulting in lower prices paid to growers.

Issues that may raise concerns

9. The ACCC is concerned about a loss of competition for the supply of cotton lint marketing and cotton warehousing services through the joint involvement of Olam and Louis Dreyfus Company Asia Pte. Ltd. (**LDC**) in the Namoi Cotton Marketing Alliance (the **NCMA**) and the Namoi Cotton Alliance (the **NCA**) through their shareholding in Namoi.

10. The ACCC is also concerned about a loss of competition for the supply of cotton lint marketing via an increased risk of coordination in circumstances where, post-acquisition, Olam and LDC would both have a shareholding in Namoi (given that LDC holds a ~18.02% per cent interest in Namoi already).

11. The ACCC is concerned that the proposed acquisition may also result in Olam having the ability to foreclose third-party access to warehousing services for the export of cotton at the ports of Brisbane and Sydney.

Issues unlikely to raise concerns

12. The ACCC's preliminary view is that, outside of the Namoi valley region and particularly the Lower Namoi Valley region, the proposed acquisition is unlikely to substantially lessen competition in the supply of ginning services in regional areas in NSW and Queensland. Outside of the Namoi Valley region, Olam would be constrained post acquisition by other suppliers of ginning services.

The ACCC's review of Louis Dreyfus Company Asia Pte. Ltd's proposed acquisition of Namoi

13. The ACCC is concurrently conducting a review of LDC's proposed acquisition of Namoi via an off-market takeover bid. The ACCC has received feedback from industry participants and has considered competition issues relating to this competing bid. The market feedback, and the ACCC's preliminary competition

concerns in relation to LDC's proposed acquisition of Namoi, are addressed in the ACCC's Statement of Issues of 16 May 2024.[1]

14. The ACCC considers some of the concerns raised in its Statement of Issues in relation to LDC's proposed acquisition of Namoi apply equally to the proposed acquisition. To the extent they do apply, they are included below.

Making a submission

15. The ACCC invites submissions from interested parties, particularly on the following key issues:

- the likelihood the proposed acquisition would result in higher prices or reduced service quality for growers seeking ginning services in the Namoi Valley, and particularly, the Lower Namoi Valley
- the likelihood the proposed acquisition would result in higher prices or reduced quality for cotton lint classing services in Australia
- the likelihood that post-acquisition, Olam would be able to frustrate and/or foreclose competing merchants from acquiring and marketing cotton lint and/or cottonseed as a result of Olam's increased ginning presence
- the likelihood the proposed acquisition would result in less vigorous competition and an increased risk of coordination for cotton lint marketing and the supply of warehousing services through Olam and LDC's common involvement in the NCMA and NCA joint ventures
- in circumstances where Olam does not acquire a 100 per cent interest in Namoi (and LDC maintains its ~18.02 per cent shareholding), the likelihood the acquisition of additional shares by Olam would result in less vigorous competition and an increased risk of anti-competitive coordination in the supply of ginning services, and marketing of cotton lint and cottonseed, and
- the likelihood the proposed acquisition would enable Olam to foreclose access to its warehousing services or raise prices for its warehousing services for the export of cotton out of the ports of Brisbane or Sydney.

16. Interested parties should provide submissions by 5pm on 4 July 2024. Responses may be emailed to mergers@accc.gov.au with the title: *Submission re: Olam's proposed acquisition of Namoi*.

17. The ACCC anticipates making a final decision on 22 August 2024, however, this timeline can change. To keep up with possible timing changes and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at www.accc.gov.au/publicregisters/mergers-registers/public-informal-merger-reviews.

[1] The ACCC's Statement of Issues dated 16 May 2024 relating to LDC's proposed acquisition of Namoi can be found on its public register here.

Confidentiality of submissions

18. 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 CCA. 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, please identify any confidential information that is provided to the ACCC. Our *Informal Merger Review Process Guidelines* contain more information on confidentiality.

About ACCC 'Statements of Issues'

19. A Statement of Issues is not a final decision about a proposed acquisition. A Statement of Issues outlines the ACCC's preliminary views and identifies further lines of inquiry.

20. 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.

The parties

Olam

21. Olam is listed in Singapore (SGX: OGL) and operates an integrated supply chain for cotton and pulse crops in Australia. Its cotton business is run by its wholly owned subsidiary, Queensland Cotton Corporation Pty Ltd (**Queensland Cotton**).

22. Queensland Cotton supplies ginning services to growers and acquires and markets cotton lint and cottonseed. Queensland Cotton operates six gins across Queensland and NSW.

23. Olam has a 20 per cent shareholding in ProClass, which supplies cotton lint classing services in Australia.

24. Olam operates its own warehousing facilities in Queensland and NSW for cotton to be exported out of the Port of Brisbane or ports in Sydney.

Namoi

25. Namoi is an ASX-listed company (ASX: NAM) with its business comprising ginning, cotton lint classing through its ownership of ACS, cotton lint and cottonseed marketing, as well as warehousing and logistics services.

26. Namoi operates ten cotton gins at nine sites across NSW and Queensland. Namoi is also involved in a joint venture with Sundown Pastoral Co Pty Ltd (called the Wathagar Ginning Company) with a gin located in the Gwydir Valley (NSW). It has a ~17 per cent interest in the Kimberley Cotton Company, which

will operate a multiuser cotton gin in Kununurra (WA) due to be completed in July 2025.

27. Namoi also has two joint venture arrangements in place with LDC – the NCA and the NCMA.

28. The NCA (of which Namoi holds a 51 per cent interest, with the remaining 49 per cent being held by LDC) stores and transports cotton lint bales through its warehousing facilities. It also provides agricultural commodities packing services. It has warehouse facilities in Wee Waa, Warren and Goondiwindi. All of its facilities have rail access.

29. The NCMA (of which Namoi holds a 15 per cent interest, with LDC holding the remaining 85 per cent) is involved in the trading and marketing of cotton lint. Namoi exclusively supplies all cotton lint bales acquired by it to the NCMA and the NCMA exclusively supplies its services to Namoi.

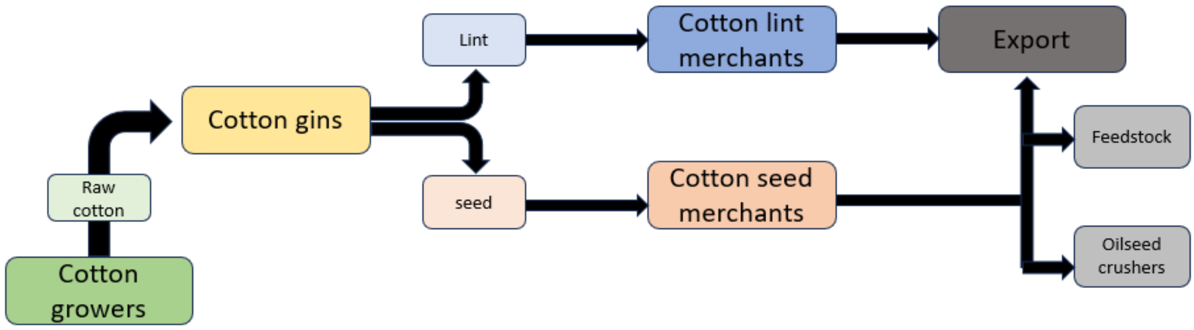
Industry background

30. As discussed above, the ACCC has previously published its Statement of Issues relating to LDC's proposed acquisition of Namoi. In its Statement of Issues, the ACCC provided an overview of the cotton production and supply industry, which is replicated below.

Australian cotton production and supply chain

31. **Figure 1** below provides a basic overview of the cotton supply chain in Australia.

Figure 1: Basic cotton supply chain in Australia



32. As shown above, cotton is ginned, then the lint and seed are sold to merchants for use domestically or for export. There are approximately fourteen cotton merchants currently operating in Australia, many of which are vertically integrated, including:

- Olam and Namoi
- Australian Food and Fibre (**AFF**) – which supplies ginning services, cotton lint classing services, warehousing and acquires and markets cotton lint and cottonseed

- Brighann – which supplies ginning services, warehousing and acquires and markets cotton lint and cottonseed, and
- LDC – which supplies ginning services, cotton lint classing services (through a 20 per cent share in ProClass), warehousing and acquires and markets cotton lint and cottonseed.

Cotton growing and transportation

33. Cotton is grown in NSW, Queensland and more recently, in the north of Western Australia and the Northern Territory.[2] There are around 1500 cotton farms in Australia,[3] ranging from large corporations to small individual farmers. Due to variable weather conditions, cotton production figures in Australia change, ranging from 0.5 million bales to 6 million bales per annum. In the 2023/24 season the vast majority of cotton was grown in NSW (337,000 ha) and Queensland (122,000 ha), with only a very small crop in Western Australia (2,500 ha).

34. Cotton is planted in spring and harvested in autumn. Raw cotton is packed into modules or round bales on the farm after harvesting and then transported to cotton gins. Raw cotton is generally transported using 2,400kg round modules (around 4.2 bales per round).

Cotton ginning

35. Once the raw cotton is transported to a cotton gin, the ginning process separates cotton lint from cottonseed. Cotton gins are generally located in the cotton growing regions and serve the growers in those regions.

36. Growers will select a gin in their region to process their cotton, although sometimes the gin may be predetermined if a grower has entered into a bundled cotton lint forward contract with a vertically integrated merchant. It is typically the growers who are responsible for organising transport to the gin. Growers may transact with more than one gin to diversify risk.

37. Different types of contracts are available for growers for ginning services:

    - gross ginning contracts – the grower pays for the ginning services and retains title to the cotton lint and cottonseed
    - gin for seed contracts – the price of cottonseed is offset against the cost of ginning services. The grower retains title to the cotton lint and sells the cottonseed to the ginner, and
    - gin for seed and lint contracts – the price of cotton lint and cottonseed is offset against the cost of ginning services.

---

[2] A map of Cotton Gins in Australia is included as **Annexure A**.

[3] Cotton Australia, Industry Overview, accessed 2 May 2024, https://cottonaustralia.com.au/industry-overview#:~:text=than%2012%2C000%20people.-,Farms,Australia%20and%20the%20Northern%20Territory.

Cotton lint classing

38. At the conclusion of the ginning process, a sample is collected from both sides of each bale of cotton lint and sent for classing. Typically, the merchant nominates and pays its chosen classing house. Classing may be undertaken by a High Volume Instrument (**HVI**) machine or manually by a specially trained classer. Cotton lint prices are then based on the grade received.

Acquisition and marketing of cotton lint and cottonseed

39. As set out above, there are different contract types for obtaining cotton lint and cottonseed between growers and merchants. In addition to the contract types outlined above, merchants can enter into contracts purely for the acquisition of the cotton lint or cottonseed (ex gin).

40. Cotton lint is traditionally sold from the gin either as a forward sale in the future (before the quality of the cotton is known), or as a spot sale once it has been ginned and classed. 40-60 per cent of Australian cotton lint is forward sold by growers ahead of planting and 10-30 per cent is sold forward for the following crop year(s). Around 20-30 per cent is sold on a spot basis.

Warehousing and export

41. Merchants take delivery of the bales of lint at the gin and organise delivery to warehouses and ports of export. Some merchants have their own warehousing and logistics services, while others rely entirely on third-party logistics suppliers. Given merchants acquire bales from across growing regions, even those merchants with their own logistics capabilities may use third-party suppliers.

42. The key export channels for cotton are:

- Port of Brisbane – usually cotton lint and cottonseed from central Queensland, Darling Downs, St George/Dirranbandi, Border Rivers and some volumes from the Gwydir Valley
- Port Botany (Sydney) – usually cotton lint and cottonseed from Namoi Valley, Macquarie Valley, Gwydir Valley and Bourke, and
- Port of Melbourne – usually cotton lint and cottonseed from the Riverina, Bourke, and some volumes from Namoi Valley and Macquarie Valley.

The proposed transaction

43. Olam proposes to acquire Namoi by way of an off-market takeover bid.

Previous ACCC decisions

LDC's acquisition of certain stock and assets of Namoi

44. On 13 March 2013, the ACCC decided not to oppose LDC's acquisition of 13 per cent of the capital stock in Namoi and a 49 per cent interest in Namoi's cotton marketing, packing and warehouse and logistics services business, the NCA.

The ACCC concluded the acquisition was unlikely to substantially lessen competition in:

- the national market for the acquisition of cotton lint and the global market for the sale of cotton lint
- the national markets for the acquisition and sale of cottonseed, and
- regional markets for the supply of ginning services.

45. The ACCC determined the acquisition would be unlikely to raise competition concerns in the markets for the acquisition and sale of cotton lint and cottonseed due to the continued presence of competitors and the ease of entry and expansion for other agricultural commodities traders not currently in cotton.

46. The ACCC determined the acquisition was also unlikely to enable LDC or Namoi to leverage Namoi's ginning assets to foreclose competing merchants' access to cotton as Namoi would continue to be constrained by other gin operators.

Market definition

47. The ACCC's starting point for considering which markets will be affected by the proposed acquisition is to identify the areas of overlap between the products or services actually or potentially supplied by the merger parties. The ACCC then considers other actual or potential suppliers of those products or services, as well as what other products or services constitute sufficiently close substitutes to provide a significant source of constraint on the merged entity.

48. Olam and Namoi overlap in the supply of ginning services, cotton lint classing services, logistics and warehousing services, and the acquisition and marketing of cotton lint and cottonseed.

49. The ACCC's preliminary view is that the markets relevant for assessing the competition effects of the proposed acquisition are:

- a regional market for the supply of ginning services to growers in the Namoi Valley and/or Lower Namoi Valley
- the supply of cotton lint classing services in Australia
- the supply of warehousing for cotton to be exported out of the Port of Brisbane and/or the Port of Sydney, and
- the acquisition and marketing of cotton lint and cottonseed from separate cotton growing regions, for example, the Lower Namoi Valley.

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

- the relevant geographic dimension of the market for the supply of ginning services in the Namoi Valley and/or the Lower Namoi Valley

- the relevant geographic dimension of the market for the supply of warehousing services for cotton, and
- the relevant geographic dimension of the market for the acquisition of cotton lint and cottonseed.

Issue of concern: Olam's ability to raise prices in the supply of ginning services to growers in the Namoi Valley region, and particularly, the Lower Namoi Valley region

50. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the supply of ginning services to growers in the Namoi Valley region, and particularly, the Lower Namoi Valley region. The ACCC has concerns the proposed acquisition would likely give rise to competition concerns for growers in circumstances where:
    - there would only be one alternative gin not operated by the merged entity in the Lower Namoi Valley region, and
    - barriers to entry are likely to be high.

There is limited competition from alternative suppliers

51. The ACCC is concerned Olam will be able to raise prices for ginning services in the Namoi Valley region, and particularly, the Lower Namoi Valley region due to a lack of alternative suppliers. The proposed acquisition would reduce the number of competing ginning providers from three to two, with Olam operating four of the five gins in the Lower Namoi Valley post-acquisition. The ACCC is concerned that Olam would be able to significantly reduce competition for ginning services, resulting in higher prices for growers in this region.

52. The ACCC considers that currently, the gins competing in the region are Olam's Wee Waa gin, Namoi's Merah North, Moomin and Boggabri gins, and AFF's Narrabri gin.[4] Post-acquisition, the only competitor to Olam will be AFF's Narrabri gin.

53. Market feedback indicates that transport costs are a significant factor in a grower's decision of which gin the cotton will go to. Market feedback suggests growers are more likely to select a gin that is closer to their farms, although other factors such as the quality of the ginning services (for example, ensuring a high turnout of lint) and the grower's relationship with the ginner can also be important. Overall, market feedback indicates that the gins grouped together in the Lower Namoi Valley region are likely to be close competitors.

54. The next closest gins for some farmers in this region, outside of AFF's Narrabri gin, are in Moree. Moree is approximately 100km from the gins in the Lower Namoi Valley and therefore, the ACCC is concerned this is unlikely an effective alternative for growers due to the additional transport costs.

---

[4] Namoi also operates a gin at Yarraman. However, the ACCC understands the Yarraman gin is only used as a cotton mote (i.e., it recycles cotton waste). It is not available to growers for cotton ginning services.

55. Notwithstanding the increase in market share in the Lower Namoi Valley post acquisition, it has been submitted that many growers, particularly in the Namoi Valley region, are large entities with significant bargaining power. It has also been submitted that growers will also often use brokers to negotiate on their behalf and improve the prices growers are able to receive for ginning services, especially when coupled with the sale of the growers' cotton lint or cottonseed. The ACCC is considering the extent to which growers have bargaining power in their interactions with gins, and what impact this has on the competitive effects of the proposed acquisition.

Barriers to entry

56. The ACCC considers that barriers to entry are high. Gins are specialised infrastructure and require significant time, capital and expertise to establish. Market feedback indicates that the cost of a new gin could be as much as $80 million.

57. Even if the investment capital required is available, the expected revenue of any new entrant would need to be sufficient to justify this investment. Given current levels of demand for ginning and capacity of existing ginners, the ACCC considers new entry is unlikely.

The ACCC invites comments from market participants on its concerns in relation to the supply of ginning services in the Namoi Valley region, and particularly, the Lower Namoi Valley region. In particular market participants may wish to comment on the following:

- the availability of alternative suppliers of ginning services, particularly for growers in the Lower Namoi Valley region
- which cotton gins in the Gwydir Valley, or other regions, are available as an alternative to supply ginning services for growers located in the Lower Namoi Valley region
- the significance of transport costs for a grower selecting which gin its cotton will go to
- whether growers (or a subset of growers) have bargaining power in acquiring ginning services, and the role of brokers in acquiring ginning services, and
- the height of barriers to entry and likelihood of new entry in supplying cotton ginning services to growers in the Namoi Valley region and, in particular, the Lower Namoi Valley region.

Issue of concern: Olam's ability to raise prices for cotton lint classing services in Australia

58. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the supply of cotton lint classing services in Australia.

59. The ACCC notes that this concern was also addressed in its Statement of Issues dated 16 May 2024 relating to LDC's proposed acquisition of Namoi. As the

interests held by Olam and LDC in ProClass are equal, the ACCC considers this competition concern similarly applies to the proposed acquisition and refers to its previous discussion for the purposes of this Statement of Issues. [5]

60. The ACCC has concerns that post-acquisition, the overlapping ownership of ProClass and ACS may give rise to competition concerns for customers because:

- the common ownership between Proclass and ACS post acquisition could lessen incentives for competition between the two cotton lint classing providers for customers
- there would only be one alternative option for cotton lint classing services outside of ProClass and ACS
- there would be an increased risk of coordination between the two cotton lint classing providers
- there would be an increased risk of the removal of visual classing as an option for growers, and
- there are high barriers to entry.

There is limited competition from alternative suppliers

61. The ACCC is concerned Olam would be able to raise prices for cotton lint classing services in Australia due to the lack of viable alternatives. Post-acquisition, Olam would have ownership interests in both ProClass and ACS, which together currently class more than 80 per cent of all cotton lint in Australia.

62. Market feedback indicates that there is only one alternative supplier of cotton lint classing services in Australia outside of ProClass and ACS, being AFF. However, this same feedback also indicates the classing service operated by AFF is generally used to class its own cotton lint, and is not available to third parties. Market participants are concerned that AFF would not have the capacity to class cotton lint from third parties to the extent it would be a competitive constraint on ProClass and ACS. As discussed below, the ACCC is concerned that AFF would not be able to scale up its capacity to meet increased demand due to the specialised capital equipment and expertise of personnel required. Therefore, the ACCC considers that the competitive constraint from AFF would likely be limited.

63. Post-acquisition, Olam would control 20 per cent of ProClass and 100 per cent of ACS. Market participants are concerned that, as a result of the proposed acquisition, growers would effectively be required to use a service related to Olam.

64. Despite the fact that Olam's interest in ProClass would be a minority interest, the ACCC is concerned that the cross-shareholdings between ProClass and ACS have the potential to reduce competition. At present, with ACS being wholly

[5] The ACCC Statement of Issues relating to LDC's proposed acquisition of Namoi on 16 May 2024 can be found here. It addresses a preliminary competition concern raised by the ACCC, namely the ability of LDC to raise prices for cotton lint classing services in Australia.

owned by Namoi, it is likely constrained from raising prices or reducing service quality through the risk of customers switching to ProClass. Post-acquisition, if ACS raises prices Olam would capture at least some of the lost profits associated with customers switching to ProClass through its shareholding in ProClass. Accordingly, Olam/ACS's incentives to compete with ProClass may therefore be impacted by the proposed acquisition.

65. The ACCC is concerned that the cross shareholdings will increase the risk of coordination, including tacit coordination between the two suppliers, which could lead to increased prices, or a reduction in the quality of the services provided. Some market participants are particularly concerned about the potential for the removal of visual classing from the industry, which some growers have indicated is valuable. The ACCC is continuing to explore in detail the extent of control or influence Olam could exercise on ProClass post-acquisition.

Barriers to entry are high

66. Barriers to entry in the classing market may be high and the likelihood of new entry low. The cost of starting a classing business is significant, and based on further market inquiries the ACCC understands that the cost of a HVI machine (which performs machine classing) is approximately in the range between $400,000 and $900,000. Market feedback is that cotton lint classing is a high volume, low margin service, with classers currently charging $2-3 per bale. Market feedback indicates that existing customer relationships and reliability in the classing service provided are important to acquiring and maintaining market share. Accordingly, given the relative size of incumbents ProClass and ACS and their capacity, the ACCC considers that entry may be unlikely given the difficulties a new entrant would likely face in achieving a profitable scale.

The ACCC invites comments from market participants on its concerns in relation to the supply of cotton lint classing services in Australia. In particular, market participants may wish to comment on the following:

- market concentration and the extent to which there would be alternative suppliers of cotton list classing services available post-acquisition
- whether the minority overlapping interests are likely to mitigate competition concerns, and
- the presence and height of barriers to entry (including cost and time) and likelihood of new entry in supplying cotton lint classing services.

Issue of concern: Olam's ability and incentive to foreclose competing merchants' access to cotton lint and cottonseed

67. The ACCC's preliminary view is that the proposed acquisition provides Olam the ability and incentive to foreclose or frustrate competing merchants' access to cotton lint and cottonseed, likely resulting in a substantial lessening of competition in the acquisition of cotton lint and cottonseed.

68. Post-acquisition, Olam will have an increased ginning presence in a number of regional markets, and in particular, the regional market around the Lower Namoi

Valley. As detailed above, Olam would operate four of the five gins in the Lower Namoi Valley region post-acquisition. As a result, in this particular region, Olam may be able to:

- tie cotton lint and cottonseed purchasing contracts to ginning contracts, and/or
- give preferential treatment to cotton lint and cottonseed that Olam is marketing and/or frustrate the ability of competing merchants to cost-effectively access cotton lint and cottonseed from Olam's gins.

69. Aside from the Lower Namoi Valley region, this concern still remains in Australia more generally as a result of Olam's increased capacity in the supply of ginning services.

70. The ACCC is concerned that, as a consequence, competing merchants' ability to compete with Olam would likely be impacted, resulting in a substantial lessening in competition in the acquisition of cotton lint and cottonseed from growers, and so resulting in lower prices paid to growers. This includes competing merchants, which do operate gins (i.e., integrated merchants) as they may still access cotton lint from regions where it does not operate a gin.

Tying of cotton lint and cottonseed contracts to ginning contracts

71. Market participants have pointed to the ability of vertically integrated operators to provide packaged ginning and merchant offers to growers to secure their business. These market participants are concerned that post-acquisition, as Olam increases its presence in ginning in the Lower Namoi Valley region, it would be able to tie merchant contracts to the provision of ginning services, preventing competing merchants from effectively competing for cotton lint and cottonseed in the Lower Namoi Valley region.

Preferential treatment for Olam acquired cotton lint and cottonseed

72. The ACCC is concerned that at Olam's gins in the Lower Namoi Valley region, preferential treatment may be given to cotton lint and cottonseed that Olam acquires from growers, raising costs for ginned cotton lint and cotton seed being acquired by competing merchants.

73. Market feedback indicates preferential treatment may take the form of applying loading fees, restricting out loading hours and giving preferential treatment to trucks picking up lint bales or seed for the owner of the gin. Market participants suggest Olam could schedule loading of the cotton lint and cottonseed at the most sought-after times of early morning, or otherwise frustrate the ability of competing merchants to cost-effectively access cotton lint and cottonseed at Olam's gins.

74. Specific to the marketing of cotton seed, market feedback also suggested that load out fees could be applied only to competing merchants collecting cottonseed from gins.

75. Market feedback also raised the possibility of Olam increasing prices for, or worsening the quality of, ginning services for competing merchants. As a result, competing merchants may see a reduction in margins, due to the higher quality-adjusted cost of ginning services at Olam gins. This could result in lower

profitability in the short term and the exit of competing merchants in the longer term, and consequently, a loss of competition in this market.

Increased visibility of cotton contracts

76. The ACCC is concerned the proposed acquisition would give Olam increased visibility over contracts for the acquisition and marketing of cotton lint. Market feedback indicates a grower must provide the gin with details of the merchant it has sold its cotton lint to, so that the grower's lint can be set aside post-ginning for the correct merchant to collect. As a result, Olam would have visibility over the volumes of cotton lint that remains uncontracted and where certain growers' lint is being sold over time. As Olam's ownership of ginning services increases, the volume and value of this information is likely to increase.

77. The ACCC is concerned that access to this data could assist Olam identify, target and sell its merchant services to uncontracted growers. Other competing merchants, especially non-integrated merchants (i.e., those that do not supply a ginning service) do not have access to this information and may be effectively foreclosed from competing to service such growers, depending on the value of the data.

The ACCC invites comments from market participants on its concerns in relation to Olam's ability and incentive to foreclose competing merchants' access to cotton lint and cottonseed. In particular, market participants may wish to comment on the following:

- the likelihood that Olam could implement tying strategies forcing growers to acquire both ginning and marketing services from Olam
- the extent to which Olam would be in a position to frustrate competing merchants' efficient access to services at Olam's gins, and the extent of any cost impact on competing merchants of such action
- the impact of tying strategies or foreclosure strategies on competition for the provision of merchant (acquisition and marketing services) to growers in the Naomi Valley
- contracting dynamics for cotton ginning services and the sale of cotton lint from growers to merchants and the scope for change in current contractual dynamics, and
- the importance of cotton ginned at Namoi gins as a source of cotton lint for competing cotton merchants.

Issue that may raise concerns: Less vigorous competition between Olam and LDC through Olam's position in the NCA and the NCMA

78. The ACCC's preliminary view is that the proposed acquisition may substantially lessen competition in the markets for the acquisition of cotton lint, and warehousing services. The proposed acquisition may result in less vigorous competition between Olam and LDC for the provision of these services through Olam's acquisition of an interest and involvement in the operation of the NCA

and the NCMA, in circumstances where Olam and LDC are some of the largest providers of cotton merchant and related services in Australia. The ACCC is concerned this may result in higher prices paid by merchants for warehousing services and/or lower prices paid to growers for cotton lint.

79. As set out above:

- the NCA stores and transports cotton lint bales. It is a joint venture in which Namoi has a 51 per cent shareholding and LDC holds the remaining 49 per cent of shares, and
- the NCMA trades and markets cotton lint. It is a joint venture in which Namoi has a 15 per cent shareholding and LDC has an 85 per cent shareholding.

80. The proposed acquisition would effectively connect Olam and LDC, two of Australia's largest vertically integrated cotton merchants and ginners. This may result in an increased risk of coordination and the transfer of competitively sensitive information between Olam and LDC, especially for cotton lint marketing.

81. Olam currently competes with the NCA for warehousing services. The ACCC is concerned that the proposed acquisition would provide Olam access to the NCA's competitively sensitive information including customer data, commercial rates and strategy. The ACCC is concerned that post acquisition Olam may not be incentivised to compete vigorously with the NCA, and there may be an increased risk of coordination between the NCA and Olam.

82. Similarly, Olam currently competes with the NCMA. The ACCC is concerned that the proposed acquisition would provide Olam with access to the NCMA's competitively sensitive information. The ACCC is concerned there may be less incentive for Olam to compete vigorously with the NCMA post-acquisition, and there may be an increased risk of coordination.

83. Accordingly, post acquisition and as a result of Olam's involvement in the NCA and the NCMA, prices paid to growers for cotton lint may be lower, and prices paid by competing merchants acquiring warehousing services may be higher.

The ACCC invites comments from market participants on its concerns in relation to Olam's involvement in the NCA and the NCMA. In particular, market participants may wish to comment on the following:

- the closeness of competition between Olam and the NCA and/or the NCMA, and
- the likelihood that Olam would not compete vigorously with the NCA and/or the NCMA.

Issue that may raise concerns: Less vigorous competition between Olam and LDC through their shareholding in Namoi

84. The ACCC's preliminary view is that there is a risk of less vigorous competition between Olam and LDC post-acquisition, should they both hold an interest in

Namoi. Some market participants expressed concerns that due to LDC's existing minority shareholding in Namoi (of ~18.02 per cent), Olam may not be able to acquire 100 per cent of Namoi shares via its off-market takeover bid, but may nevertheless still achieve a controlling interest.

85. The ACCC is concerned that such interests may result in less vigorous competition potentially leading to lower prices paid to growers for cotton lint and cottonseed, or increased prices for cotton ginning services, or higher prices for competing merchants acquiring warehousing service.

86. The ACCC considers the potential overlapping ownership of Olam and LDC in Namoi may give rise to competition concerns for customers because:

- the respective shareholdings of Olam and LDC in Namoi could lessen incentives for them to compete for customers,
- there would be an increased risk of sharing competitively sensitive information, and
- there would be an increased risk of coordination between Olam and LDC.

87. Market participants indicated there may be an increased risk of sharing of competitively sensitive information. It has been raised that Olam's majority position would likely enable it to significantly influence the management of Namoi's operations, including the financial strategy and pricing. LDC would be privy to these financial and strategic decisions and may provide LDC insight into Olam's separate commercial operations.

88. The ACCC understands that LDC would retain its seat on the Board of Namoi in circumstances where LDC maintains its ~18.02 per cent shareholding. Olam would likely have nominee board members on Namoi's board. LDC and Olam would therefore both be likely involved in approving financial and strategic decisions relating to Namoi. The ACCC is concerned this may increase the risk of coordination.

The ACCC invites comments from market participants on its concerns in relation to the respective shareholdings of Olam and LDC in Namoi. In particular, market participants may wish to comment on the following:

- the likelihood the proposed acquisition would reduce incentives for vigorous competition for customers between LDC, Olam and Namoi leading to lower prices paid to growers for cotton lint and cottonseed, and
- the likelihood of overlapping ownership interests resulting in an increased risk of coordination and/or sharing of competitively sensitive information.

Issues that may raise concerns: Olam's ability to foreclose access to warehousing services for the export of cotton out of the Port of Brisbane or ports in Sydney

89. The ACCC's preliminary view is that the proposed acquisition may result in Olam having the ability to foreclose third-party access to its warehousing services for

the export of cotton out of the Port of Brisbane or ports in Sydney. Post acquisition, Olam may have the ability and incentive to prevent competing merchants contracting for such services or to increase the price paid by competing merchants for such services.

90. The ACCC is concerned the foreclosure of access to Olam’s warehousing services post-acquisition may make it difficult for competing merchants to purchase cotton lint and cottonseed from growers.

91. As a result, competing merchants would be required to acquire their own warehousing or acquire warehousing from other suppliers. This may be difficult due to the limited amount of suitable warehousing available, and the investment required to set up new cotton lint warehousing services.

92. Market feedback indicates that shipping cotton bales large distances to alternative warehouses is expensive. It is also difficult to secure warehousing space at the Brisbane and Sydney ports, particularly during peak periods.

The ACCC invites comments from market participants on the impact of the proposed acquisition on the supply of warehousing services for cotton to be exported out of the Port of Brisbane or ports in Sydney. In particular, market participants may wish to comment on the following:

- the availability and ease of access of other third-party warehousing services for cotton merchants (i) at or near the Port of Brisbane, (ii) at or near ports in Sydney and (iii) up-country in the region(s) connected to the Port of Brisbane or ports in Sydney cotton export supply chain
- the likely revenues expected from operating warehousing assets, particularly for the Port of Brisbane and the ports in Sydney
- the height of barriers to entry to self-supply warehousing and related logistic services, including its likelihood and how long it might take (i) at or near the Port of Brisbane, (ii) at or near ports in Sydney and (iii) up-country in the region(s) connected to the Port of Brisbane or the ports in Sydney cotton export supply chain
- the availability of suitable land at or near (i) the Port of Brisbane or (ii) the ports in Sydney with access to major road and rail corridors to the Port of Brisbane from up-country sites
- the advantages and disadvantages for cotton merchants of filling export shipments from warehousing services at or near the relevant port as opposed to up-country warehouses, particularly for the Port of Brisbane and the ports in Sydney, and
- the ability to recoup investment costs on new warehousing services for cotton and the ability for incumbent suppliers to price strategically in response to new entry.

ACCC's future steps

93. As noted above, the ACCC invites submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions should be emailed to mergers@accc.gov.au by no later than 5pm on 4 July 2024.

94. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.

95. The ACCC intends to publicly announce its final view by 22 August 2024. However, the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment explaining the ACCC's final view may be published following the ACCC's public announcement.

Annexure A – Map of cotton gins in Australia