

'Form S' – Application by Murray Goulburn for Merger Authorisation

29 November 2013

Filed on behalf of Murray Goulburn Co-Operative Co Limited

Prepared by:

Herbert Smith Freehills

Tel + 61 3 9288 1234

Email

Fax +61 3 9288 1567

Ref:

CJ:ALM:82230139

Address for service

Level 43, 101 Collins Street

MELBOURNE VIC 3000



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To the Australian Competition Tribunal: Application is hereby made under section 95AU of the *Competition and Consumer Act 2010* for an authorisation under subsection 95AT(1) to acquire shares in the capital of a body corporate or to acquire assets of another person.

Overview

In addition to the information disclosed in this application (Form S), Murray Goulburn relies upon the evidence contained in the following statements and reports submitted in support of this application:

- David Michael Noonan;
- Robert Arthur Poole;
- Keith Mentiplay;
- Maldwyn Beniston;
- Mark McDonald;
- John Barnett;
- Peter William Scott;
- Christopher Jon Pleatsikas;
- Christopher Phillips; and
- Michael Craig Norgate.

1 The Applicant (the Acquirer)

1.1 Name and registered office (where applicable) of the Applicant including the ACN (where applicable) and place of incorporation (where applicable).

- | | | |
|---|--------------------------------|--|
| 1 | Company Name: | Murray Goulburn Co-operative Co. Limited (Murray Goulburn) |
| 2 | ACN: | 004 277 089 |
| 3 | Registered Office: | Freshwater Place, Level 15, Southbank Boulevard, Southbank Victoria 3000 |
| 4 | Place of incorporation: | Victoria |

1.2 Describe the business or businesses carried on by the Applicant including the products and services the Applicant supplies.

Overview of Murray Goulburn

- 5 Murray Goulburn is an unlisted public company located in south east Australia that processes and manufactures drinking milk and other dairy products. It is controlled by the



dairy farmers from whom it acquires raw milk, and operates in accordance with cooperative principles.¹

6 Murray Goulburn's 2013 Annual Report forms Attachment RAP3.

Business activities of Murray Goulburn

7 Murray Goulburn currently acquires raw milk from approximately 2,500 dairy farmers located in various dairy producing regions of Victoria, South Australia and New South Wales (and also acquires milk from a joint venture in Tasmania).²

8 Using that raw milk, Murray Goulburn produces and sells a range of finished dairy products and dairy ingredients including fresh milk, daily pasteurised milk, ultra heat treated (**UHT**) milk, cheeses, butter and spreads, milk powders, whey powders, milk fats, specialty milk proteins and nutritional products (including infant formula)³ in Australia and overseas. Its products are marketed under its own brands (including its flagship Devondale brand), as well as under private label and manufacturer brands.

9 During the financial year ended 30 June 2013 (**FY2013**), Murray Goulburn:

- (a) acquired approximately 2.99 billion litres of raw milk from dairy farmers;
- (b) produced 760,678 tonnes of dairy products, and exported 336,000 tonnes of dairy products;
- (c) had total revenue of \$2.385 billion, with international sales accounting for approximately 48% of that revenue; and
- (d) had profit before income tax of \$39.053 million.⁴

10 Murray Goulburn employs over 2,000 people and is Australia's largest dairy food exporter to the major markets of Asia, the Middle East, North Africa and the Americas.

Business units of Murray Goulburn

11 Murray Goulburn operates under the following business units:

- (a) Ingredients – as the single largest contributor to Murray Goulburn's annual revenue, this unit produces a wide range of milk powders, cheeses, milk protein concentrate, milk-fat products, specialty proteins, caseinates and whey products;
- (b) Brands – represents 35% of the company's sales and produces UHT milk, cheese, butter and spreads and cream products. These products are marketed under Murray Goulburn brands (such as Devondale and Liddell's) and private labels for major retailers or food service wholesalers;
- (c) Nutritionals – produces protein isolates, colostrum, lactoferrin, natural milk minerals, ASCEND Elite milk proteins, and Proform vitamin enriched protein milk powder;
- (d) Murray Goulburn Trading – offer various farm products, expert technical and agronomy advice services and milk machine sales and servicing. Murray Goulburn's farmer suppliers receive a 3% discount; and

¹ Statement of Robert Poole (**Poole**), 10.

² Poole, 112 (Murray Goulburn processes approximately 80 million litres in Tasmania); Statement of Mark McDonald (**McDonald**), 4, 10.

³ Statement of Keith Mentiplay (**Mentiplay**), 11.

⁴ Murray Goulburn Annual Report 2013, 3 and 51; Poole, 112, RAP3.



- (e) Murray Goulburn Dairy (Qingdao) Co Ltd – Murray Goulburn’s first manufacturing facility outside of Australia. The facility uses Australian dairy ingredients, which are formulated from milk supplied by farmer-shareholders. It produces a range of infant nutrition products under the NatraStart brand which are marketed and distributed throughout China.⁵
- 12 Murray Goulburn offers its farmer suppliers a range of additional services, primarily through its 21 Murray Goulburn Trading stores and four fertiliser depots.⁶
- 13 Murray Goulburn employs Field Service Officers who provide free services to farmer suppliers, including farm budgeting, food safety services and farm audits.⁷
- 14 Murray Goulburn also offers loans at competitive rates to its farmer suppliers through its Murray Goulburn Trading Finance and Supplier Finance programs.⁸

Objects of Murray Goulburn

- 15 Murray Goulburn’s constitution requires it to carry on business having as its primary objects one or more of the following:
- (a) the acquisition of milk and other commodities from its shareholders for disposal or distribution;
 - (b) the storage, marketing, packing and/or processing of milk and other commodities of its shareholders;
 - (c) the rendering of services to its shareholders; and
 - (d) without limitation in respect of the above primary objects, such other objects as the Board may from time to time resolve as being in the interests of Murray Goulburn and its shareholders and suppliers and for the benefit of its shareholders and suppliers.⁹
- 16 Murray Goulburn’s stated business objective is to significantly increase the farmgate milk price.¹⁰
- 17 Murray Goulburn’s senior executives are motivated to deliver increases in the farmgate milk price, because a significant proportion of their remuneration is based on Murray Goulburn’s milk price performance. Specifically:
- (a) in the case of Murray Goulburn’s senior executives, apart from the Managing Director, 25% of their remuneration comprises a short term incentive that is only paid if the milk price budget set by the Board at the beginning of each year is achieved.¹¹ If the milk price budget is achieved, three other factors (namely, safety performance, internal audit performance and individual KPIs) determine the level of short term incentive that is paid; and
 - (b) in the case of Murray Goulburn’s Managing Director, 50% of total remuneration is made up of ‘at risk’ remuneration. Of this, 40% comprises a short term incentive (which is paid as described in (a) above) and 60% comprises a long term incentive, which is paid having regard to implied milk price growth and

⁵ Murray Goulburn Bidder’s Statement dated 28 November 2013.

⁶ Poole, 87.

⁷ Poole, 97-98.

⁸ Poole, 99.

⁹ Poole, 14, 15; Murray Goulburn Constitution, 2.2.

¹⁰ Poole, 17; Murray Goulburn Annual Report 2013, 45.

¹¹ Poole, 61; Murray Goulburn Annual Report 2013, 41-43.



return on capital employed on an equally weighted basis. The level of long term incentive paid depends on whether either of the “Threshold”, “Target” or “Stretch” performance levels are met.¹²

Ownership structure of Murray Goulburn

- 18 Murray Goulburn is the ultimate parent company of the Murray Goulburn Group.
- 19 Murray Goulburn does not have any shareholders with more than five per cent shareholding in it. Under Rule 5.3 of Murray Goulburn’s Constitution, the elements of which are paraphrased below, the following shareholder caps apply:
- 5.3.1 No person (other than a person described in Rules 5.3.2 and 5.3.3) may hold more than 0.5% of the aggregate of all issued shares of Murray Goulburn.
- 5.3.2 A subsidiary of Murray Goulburn may hold up to 15% of the aggregate of all issued shares of Murray Goulburn.
- 5.3.3 For an ‘approved institution’ (as declared by the Board) the total number of shares (other than ordinary or NV class shares) is not to exceed 40% of all issued shares of Murray Goulburn.
- 20 Murray Goulburn is not aware of any entity that holds more than a five per cent shareholding in Murray Goulburn.

Shares and voting in Murray Goulburn

- 21 There are five classes of shares in Murray Goulburn:
- (a) Ordinary shares, which carry a right to one vote for every share;¹³
- (b) “NV” class shares, which do not carry any voting rights;
- (c) “A” class non-cumulative preference shares, which do not carry voting rights;
- (d) “B” class non-cumulative preference shares, which do not carry voting rights; and
- (e) “C” class non-cumulative preference shares, which do not carry voting rights.¹⁴
- 22 Only those dairy farmers who currently supply Murray Goulburn with raw milk (**farmer suppliers**) may hold ordinary shares in Murray Goulburn, and all farmer suppliers must hold at least 500 ordinary shares.¹⁵ Specifically:
- (a) Ordinary and NV shares have a value of \$1.00 per share, and farmer suppliers purchase their initial holding of 500 ordinary shares at \$1.00 per share; and
- (b) There is a monthly share off-take scheme in which farmer suppliers are paid the equivalent of \$0.0065 per litre in shares for each litre of milk supplied during that month.¹⁶
- 23 Murray Goulburn’s constitution requires that voting power be roughly equitably distributed across all of its farmer suppliers in the following ways:
- (a) The Board is obliged, so far as it is practicable, to ensure that the ratio between each farmer supplier’s ordinary shares and milk volume (in litres) is 1:5.¹⁷

¹² Poole, 62; Murray Goulburn Annual Report 2013, 41 – 45.

¹³ Murray Goulburn Constitution, 14.

¹⁴ Poole, 18; Murray Goulburn Constitution, 4.3

¹⁵ Murray Goulburn Constitution, 5.1 and 5.2.

¹⁶ Poole, 43.

¹⁷ Murray Goulburn Constitution, 5.1(b).



Shares in excess of that ratio would be converted into NV class shares, which do not carry any voting rights. Subject to (b) below, this means farmer suppliers are able to vote in proportion to the volume of milk that they supply.¹⁸

- (b) No farmer supplier is permitted to hold more than 0.5% of the total number of shares.¹⁹ If a farmer supplier's shareholding breaches the 0.5% cap, the Board may require that the shares be disposed of, or convert them into NV class shares, which do not carry any voting rights.²⁰
- (c) If a shareholder ceases to be a farmer supplier, that shareholder's shares would be redeemed unless the Board consents to converting that shareholder's ordinary and NV class shares into non-cumulative preference shares (which do not carry any voting rights).²¹

24 The rules relating to shareholder voting rights can only be altered if 90% of ordinary shareholders, or if polled, shareholders representing at least 90% of the ordinary shares, vote in favour of the change.²²

Governance and the Board of directors of Murray Goulburn

25 Murray Goulburn's constitution provides for the appointment of the following categories of directors to its Board of directors:

- (a) at least seven directors must be farmer suppliers who have been nominated by at least five other farmer suppliers from the one "supplier region";²³
- (b) there may be one managing director;²⁴ and
- (c) there may be up to three special directors, who are not required to be farmer suppliers or shareholders of Murray Goulburn.²⁵

26 Murray Goulburn's constitution requires that farmer suppliers be divided into "supplier regions". At present, there are the following supplier regions, and each of these regions is able to appoint the following number of directors:

- (a) Gippsland region – three directors;
- (b) Northern region – three directors; and
- (c) Western region – three directors.²⁶

The Board may, by majority decision, increase or reduce the number of supplier regions (but not less than three or more than ten), and may increase or decrease the number of directors appointed by each supplier region.²⁷

27 The Board's policy is that the number of directors per supplier region ought to reflect the quantity of milk acquired from each supplier region. At present, because the volume of

¹⁸ Poole, 28.

¹⁹ Murray Goulburn Constitution, 5.3.

²⁰ Murray Goulburn Constitution, 5.4.

²¹ Poole, 29; Murray Goulburn Constitution, 4.4.

²² Poole, 32; Murray Goulburn Constitution, 2.5.

²³ Murray Goulburn Constitution, 15.1 and 15.5.

²⁴ Murray Goulburn Constitution, 15.2.

²⁵ Murray Goulburn Constitution, 15.3.

²⁶ Poole, 53; Murray Goulburn Constitution, 3.5 and 15.1.

²⁷ Murray Goulburn Constitution, 15.1 and 17.9(b).



milk acquired in each supplier region is approximately the same, each region has the same number of representative directors.²⁸

28 The current Board comprises a managing director, nine supplier directors and two special directors.²⁹

29 Murray Goulburn management also regularly consults with its farmer suppliers through a consultative group comprising 30 farmer suppliers, with ten being appointed by management from each of Murray Goulburn's three regions.³⁰

Dividends paid to Murray Goulburn shareholders

30 All shareholders of Murray Goulburn are entitled to receive dividends. In the case of non-cumulative preference shares:

- (a) "A" class shares entitle the holder to a non-cumulative preferential dividend of 8% (on the face share value of \$1); and
- (b) "B" and "C" class shares entitle the holder to a non-cumulative preferential dividend at a rate determined by the Board.³¹

31 In FY2011, FY2012 and FY2013, the final dividends paid or recommended were as follows:³²

Share type	FY2011	FY2012	FY2013
Ordinary shares and NV class shares	\$0.12	\$0.12	\$0.08
Class A preference shares	\$0.08	\$0.08	\$0.08
Class B preference shares	\$0.05	\$0.05	\$0.05
Class C preference shares	\$0.08	\$0.08	\$0.08
Total dividends paid	\$29,937,000	\$31,282,000	\$25,096,000

Possible capital restructure of Murray Goulburn

32 Murray Goulburn has undertaken a review of its capital structure to investigate the most effective and efficient capital structure which will permit it to invest in the capacity and capability of existing plant operations and capitalise on growth opportunities, particularly in emerging export markets. A core objective is to increase the return to Murray Goulburn's suppliers by at least \$1.00 per kilogram milk solids (more than \$0.07 per litre)

²⁸ Poole, 53.

²⁹ Poole, 49.

³⁰ Poole, 29.

³¹ Poole, 37; Murray Goulburn Constitution, 6.1 and 7.4.

³² Poole, 38.



over a five year period from 2012 to 2017.³³ The restructure has been considered by a Board sub-committee which has met regularly during 2013.

- 33 The principal objectives of the proposed restructure are to:
- (a) retain the co-operative structure and 100% Australian dairy farmer control of Murray Goulburn;
 - (b) underpin Murray Goulburn's goal of an increase in farm-gate returns of \$1 per kg of milk solids (more than seven cents per litre) over a five year period from 2012 to 2017;
 - (c) provide Murray Goulburn supplier/shareholders with an observable market price for their Murray Goulburn shares, consequently strengthening farm balance sheets ; and
 - (d) provide access to additional sources of capital to meet the co-operative's investment plans and deliver improved returns.³⁴
- 34 The proposed restructure is subject to a comprehensive review process with supplier/shareholders and further development. Murray Goulburn is commencing a round of consultation meetings with its supplier/shareholders in December 2013/January 2014 with a further round in March 2014. Depending on the outcome of those meetings it is presently intended to put the proposed restructure to shareholders at an Extraordinary General Meeting in 2014.³⁵
- 35 It is not proposed that the capital restructure will change the co-operative structure of Murray Goulburn, or any merged entity created from the acquisition of WCB.³⁶ As set out above, it is proposed that supplier shareholders will still retain control over Murray Goulburn or the merged entity. The co-operative principles on which Murray Goulburn presently operates will therefore not be able to be changed without the approval of supplier shareholders.
- 36 Murray Goulburn believes that the benefits to supplier/shareholders from such a capital restructure will include:
- (a) the capital restructure will place Murray Goulburn in a stronger financial position to pursue growth opportunities, particularly in relation to export of dairy products. Growth opportunities will increase earnings which will in turn lift the return to suppliers;
 - (b) the restructure will assist Murray Goulburn to reduce its debt, also placing it in a stronger financial position; and
 - (c) the enhanced value placed on supplier/shareholder shares will provide them with potential access to funding from external lenders to grow their own businesses.³⁷
- 37 A copy of the letter provided to Murray Goulburn shareholders at the Annual General Meeting on 22 November 2013 explaining the proposed restructure is attached as RAP61.

³³ Poole, 258.

³⁴ Poole, 259.

³⁵ Poole, 260.

³⁶ Poole, 261.

³⁷ Poole, 262.



1.3 Provide details of all related bodies corporate of the Applicant including the ACN.

38 The related bodies corporate of Murray Goulburn are as follows:³⁸

Name of subsidiary	Percentage held by Murray Goulburn
Murray Goulburn Investment Limited (ACN 053 9090 774)	100%
Murray Goulburn Superannuation Pty Ltd (ACN 065 873 887)	100%
Murray Goulburn Nominees Pty Limited (ACN 005 606 137)	100% (beneficially)
Murray Goulburn Trading Pty Limited (ACN 004 515 744)	100%
Lavery International Pty Ltd (ACN 004 590 952)	100%
Classic Food Holdings Pty Ltd (ACN 009 585 782)	100%
Provico Pty Ltd (ACN 103 816 753)	51%
Murray Goulburn Project Inverloch Pty Ltd (ACN 163 037 750)	100%
Murray Goulburn Project Inverloch (Finance) Pty Ltd (ACN 163 496 137)	100%
Murray Goulburn Nutritionals Pty Ltd (ACN 095 407 257)	100%
Meiji-Murray GoulburnC Dairy Co Pty Ltd (ACN 070 697 648)	100%

³⁸ Statement of David Michael Noonan (**Noonan**), 42.



Name of subsidiary	Percentage held by Murray Goulburn
Murray Goulburn Agrilink Pty Ltd (ACN 113 118 540)	100%
Murray Goulburn Transition Pty Ltd (ACN 117 914 637)	100%
Murray Goulburn International Pty Ltd (ACN 117 793 450)	100%
Tasmanian Dairy Products Co Ltd (ACN 149 714 198)	56.1%
Devondale Foundation Limited (ACN 154 093 786)	Company limited by guarantee which is controlled by Murray Goulburn as the directors and shareholders are Murray Goulburn employees and directors
Murray Goulburn Employees Equity Limited (ACN 061 622 786)	Company limited by guarantee which is controlled by Murray Goulburn as the directors and shareholders are Murray Goulburn employees and directors
Classic Foods Pty Ltd (ACN 009 572 436)	100% (indirectly)
Murray Goulburn Dairy (Qingdao) Co. Ltd (Incorporated in China)	100%
Murray Goulburn Nutritional (Qingdao) Co., Ltd (Incorporated in China)	100%
Murray Goulburn Asia Holding Company Pte. Limited (Incorporated in Singapore)	100% (indirectly)



Name of subsidiary	Percentage held by Murray Goulburn
Murray Goulburn Procurement Company Pte. Limited (Incorporated in Singapore)	100% (indirectly)
Murray Goulburn SEA Pte. Limited (Incorporated in Singapore)	100% (indirectly)

1.4 Address in Australia for service of documents on the Applicant.

39 Herbert Smith Freehills
101 Collins Street
Melbourne Victoria 3000

Attention: Chris Jose
Direct telephone: +61 3 9288 1416
Mobile telephone: +61 411 514 487
Fax: +613 9288 1567
Email: Chris.Jose@hsf.com

1.5 Name and address of any person for whose benefit or on whose behalf the shares or assets to be acquired will be held.

40 Murray Goulburn Co-operative Co. Limited
Freshwater Place,
Level 15, Southbank Boulevard,
Southbank Victoria 3000

2 The Target

2.1 In the case of a body corporate whose shares or assets are to be acquired:

- (a) **Name of the body corporate including the ACN where applicable.**
41 Warrnambool Cheese and Butter Factory Company Holdings Limited (**WCB**)
(ACN 071 945 232).
- (b) **Place of incorporation of the body corporate.**
42 Victoria.
- (c) **Registered office of the body corporate.**
43 5331 Great Ocean Road, Allansford, Victoria 3000.
- (d) **Describe the business or businesses carried on by the body corporate including the products and services the Target supplies.**

Overview of WCB



44 WCB is Australia's fourth largest dairy processor and is located at Allansford in south west Victoria.³⁹ It is a listed public company with approximately 3,900 shareholders. It does not operate according to cooperative principles.⁴⁰

45 WCB's 2013 Annual Report forms Attachment RAP6.

Business activities of WCB

46 In FY2013, WCB collected 890 million litres of raw milk⁴¹ from over 570 dairy farmers⁴² mostly located in the dairy producing regions of south-western Victoria and South Australia.⁴³ This represents 10% of Australia's annual milk production.

47 Using that raw milk, WCB produces and sells a range of dairy products including cheeses, milk powders, whey protein concentrate, butter, cream and packaged milk.⁴⁴ WCB does not produce finished nutritional products⁴⁵ or UHT milk.⁴⁶

48 WCB currently produces approximately 130,000 tonnes⁴⁷ of dairy products at its two Australian processing plants:

- (a) One is located in south-western Victoria at Allansford, where WCB conducts the overwhelming majority of its processing and manufacturing. It is one of the largest and highest production capacity sites in Australia; and
- (b) One is located in South Australia at Mil Lel, where WCB processes, cuts and wraps speciality cheeses.⁴⁸

49 WCB exports approximately 40% of its cheese, almost all of its milk powder, some of its butter and cream products, and the majority of its whey protein concentrate.⁴⁹

50 In FY2013, WCB had:

- (a) total revenue of \$495.851 million; and
- (b) profit before income tax of \$9.591 million.⁵⁰

51 WCB is one of the largest employers in south west Victoria, with 400 employees across sites in Allansford, Mount Gambier (South Australia) and Port Melbourne.

Business units of WCB

52 WCB's business is divided into three core business areas:

- (a) Commodities (85% of FY2013 revenue) – consisting of dairy products (such as cheese, milk powders, butter, cream and whey protein concentrate) which are sold to wholesale customers in domestic and export markets;

³⁹ WCB Target's Statement regarding Saputo's offer, 44.

⁴⁰ WCB Target's Statement regarding Saputo's offer, 44.

⁴¹ WCB Annual Report 2013, 3.

⁴² WCB Target's Statement regarding Saputo's offer, 44.

⁴³ Poole, 115 and 120.

⁴⁴ Mentiplay, 67.

⁴⁵ Statement of Maldwyn Beniston (**Beniston**), 144, 145.

⁴⁶ Scott, 63.

⁴⁷ WCB Target's Statement regarding Saputo's offer, 44.

⁴⁸ Mentiplay, 66 and 67.

⁴⁹ WCB Target's Statement regarding Saputo's offer, 44, 45.

⁵⁰ WCB Annual Report 2013, 40.



- (b) Consumer goods (11.4% of FY2013 revenue) – consisting of consumer dairy products sold in retail channels under consumer brands, such as Sungold (milk), Great Ocean Road (milk and cheese), Warrnambool (cheese) and Enprocal (nutritional products); and
- (c) Other (3.3% of FY2013 revenue) – various business that does not fall into either commodities or retail segments.

Ownership structure of WCB

53 WCB is the ultimate parent company of the Warrnambool Group. The following table contains a list of WCB shareholders with more than five per cent shareholding.⁵¹

Shareholder	Percentage shareholding
Bega Cheese Limited	18.42%
Murray Goulburn Co-operative Co Limited	17.66%
Lion - Dairy & Drinks Ltd, Lion Pty Ltd and subsidiaries, and Kirin Holdings Company, Limited	9.99%

(e) Number and type of shares or description of assets to be acquired.

54 Murray Goulburn is offering to pay all-cash consideration to acquire all WCB shares including shares that are issued during the offer period whether due to the conversion of WCB Performance Rights or otherwise.

55 WCB Performance Rights vest on a 1:1 basis into WCB shares and are granted to eligible employees for no consideration. Vesting may only occur upon the fulfilment of certain conditions, such as the employee meeting certain performance hurdles prescribed by the Board.⁵²

2.2 In the case of a body corporate whose shares are to be acquired, provide details of:

(a) the issued capital of the body corporate;

56 As at the date of this application, WCB has 55,672,679 ordinary shares on issue (including shares have been issued to employees under WCB's employee share plan) with a fully-paid amount of \$47,973,091.48.

57 In addition, 296,832 shares have been issued to employees under WCB's employee share plan, which imposes restrictions on disposal of those shares for three years from allotment unless the employee ceases employment with WCB earlier.

(b) the holders of such issued capital.

⁵¹ Murray Goulburn Bidder's Statement, 32.

⁵² Murray Goulburn Bidder's Statement, 35.



58 The top 20 shareholders of WCB, as set out in the Annual Report for WCB for FY2013 and updated by subsequent ASX shareholder disclosures, are as follows:

Shareholder	Number of ordinary shares
Bega Cheese Limited	10,007,290
Murray Goulburn Co-operative Co Limited	9,661,981
Lion - Dairy & Drinks Ltd, Lion Pty Ltd and subsidiaries, and Kirin Holdings Company, Limited	5,596,950
Est Thomas C Gall	759,200
Mr John Andrew Gall	625,999
Geoffrey Charles Marsh	600,000
Bernard James Kavanagh	596,809
Chalmsbury Nominees Pty Ltd	552,188
J & H Renyard Pty Ltd	545,278
RBC Investor Services Australia Nominees Pty Ltd	440,399
Keith Allan Bonnett & June Maree Bonnett	407,593
Myrtle I Gall	406,075
J & K McKinnon Pty Ltd	384,636
Donald J Gall	373,657
J P Morgan Nominees Australia Limited	330,035
J & K McKinnon Pty Ltd	325,000
Parsley Investments Pty Ltd	300,000
Mrs Elizabeth Marie Murphy	295,485



Shareholder	Number of ordinary shares
Myrtle I Gall & John A Gall & Donald J Gall	281,812
Myrtle I Gall	280,000

2.3 Provide details of all related bodies corporate of the body corporate whose shares or assets are to be acquired by the Applicant.

59 The related bodies corporate of WCB are as follows:⁵³

Name of subsidiary	Percentage held by Warrnambool
The Warrnambool Cheese and Butter Factory Company Limited (ACN 004 032 053)	100%
Australian Dairy Products Pty Ltd (ACN 076 753 341)	100%
Warrnambool Milk Products Pty Limited (ACN 007 090 315)	100%
Protein Technology Victoria Pty Ltd (ACN 050 242 478)	100% (indirectly)

2.4 In the case of a person (other than a body corporate) whose assets are to be acquired:

- (a) **Name and address of the person.**
60 Not applicable.
- (b) **Describe the business or businesses carried on by the person including the products and services the person supplies.**
61 Not applicable.
- (c) **Describe the assets to be acquired.**
62 Not applicable.

⁵³ WCB Annual Report 2013, 71.



3 The acquisition

3.1 Outline the nature and details of the contract, arrangement, understanding or proposal for the acquisition and, if applicable, the public offer document, and provide a copy of any relevant contract, document or public offer document.

63 Murray Goulburn is offering to acquire all WCB shares via an off-market takeover bid with all-cash consideration of \$9.50 per share. The WCB shares to be acquired include WCB shares issued during the offer period whether due to the conversion of Warrnambool Performance Rights or otherwise.

64 A copy of Murray Goulburn's Bidder's Statement dated 28 November 2013 is provided with this form. The document is the statement of Murray Goulburn under Part 6.5 Division 2 of the Corporations Act.

65 Murray Goulburn's offer is subject to a number of conditions set out in section 9.7 of its Bidder's Statement dated 28 November 2013, including (among others):

- (a) no objection by the ACCC or granting of authorisation by the Australian Competition Tribunal in relation to the proposed transaction;
- (b) Murray Goulburn having a relevant interest in greater than 50% of WCB by close of the increased offer;
- (c) no material new acquisitions, disposals or other commitments by WCB beyond certain financial thresholds; and
- (d) no material adverse change or prescribed occurrence events occurring with respect to WCB.

66 Murray Goulburn's off-market takeover bid will proceed according to the timeframe prescribed under section 633(1) of the Corporations Act.

67 Given that Murray Goulburn's Bidder's Statement was lodged with ASIC (and WCB and ASX) on 28 November 2013, the earliest time at which Murray Goulburn can send its Bidder's Statement to WCB shareholders (and therefore make offers capable of acceptance) is on 13 December 2013.

68 A contract for the acquisition of shares is formed between Murray Goulburn and a WCB shareholder once that shareholder accepts Murray Goulburn's offer by completing and returning the offer acceptance form.

69 Murray Goulburn's offer closing date will be determined and made public on the day that Murray Goulburn's Bidder's Statement is sent to WCB shareholders (with the offer closing date contained in that version of the Bidder's Statement). Murray Goulburn can extend its offer in accordance with section 650C of the Corporations Act.

70 As specified in clause 9.6 of Murray Goulburn's Bidder's Statement dated 28 November 2013 (and as governed by the Corporations Act), Murray Goulburn will provide the consideration due to a WCB shareholder who has accepted the offer on or before the earlier of:

- (a) one month after the date of acceptance or, if the offer is subject to a defeating condition when the offer is accepted, within one month after the offer becomes unconditional; and
- (b) 21 days after the end of the offer period.

71 If Murray Goulburn and its associates have a relevant interest in at least 90% of the WCB shares, Murray Goulburn proposes to compulsorily acquire to all outstanding WCB shares. The compulsory acquisition process following a takeover bid is governed by Part



6A.1 (Division 1) of the Corporations Act and Murray Goulburn would conduct any compulsory acquisition process in accordance with those sections.

3.2 Provide details of the commercial rationale for the acquisition and copies of all documents that were prepared specifically for the purpose of evaluating the proposed acquisition with respect to the market(s) affected and the nature of those effects.

72 The principal benefits perceived by the Murray Goulburn Board and Executive to underpin Murray Goulburn's rationale for pursuing the WCB acquisition are set out below:

- (a) **Access to substantial milk volumes:** The acquisition will deliver a substantial increase in the milk pool available from a stable milk supply region in Victoria. WCB has stated that it has assumed that in FY2014 its milk intake will be 802 million litres.⁵⁴ Murray Goulburn expects to hold most of these suppliers, although WCB's suppliers are not contractually tied to WCB and are free to choose the processor to which they sell their milk.⁵⁵ This volume of milk would represent a substantial addition to Murray Goulburn's existing milk pool, bringing its total milk volumes to about 4 billion litres (FY14).
- (b) **A strategic processing asset:** Murray Goulburn understands that WCB has a good quality and relatively efficient facility in its Allansford plant with some peak and off peak period capacity. Although the facility is not new, and Murray Goulburn has not had an opportunity to undertake due diligence, it is understood to be well maintained and operationally efficient. The Allansford plant produces cheese, milk powders, butter, daily pasteurised milk and nutritional supplements. In particular WCB has significant cheese making facilities which are not available at Murray Goulburn's Koroit plant. This Allansford plant will provide Murray Goulburn with additional facilities which complement Murray Goulburn's growth initiatives and potentially reduce the need for capital expenditure.⁵⁶
- (c) **Product optimisation and diversification opportunities:** Murray Goulburn considers that a number of opportunities will arise from the WCB acquisition to optimise and diversify its operations. Specifically, Murray Goulburn considers that these potential opportunities include the following.⁵⁷
- **Cheese:** all of Murray Goulburn's cheese is currently produced in northern Victoria from its plants at Cobram and Rochester. WCB has substantial cheese product at its Allansford plant. [REDACTED]
[REDACTED] The WCB acquisition will also enable Murray Goulburn to produce cheese from two regions, which will help manage any supply issues within one region. Demand for retail and foodservice cheese (domestic and international) means the additional bulk cheese sourced from WCB could be converted into value added products for supply to retail and foodservice customers at potentially higher margins. Murray Goulburn envisages that it could

⁵⁴ Noonan, DMN13.

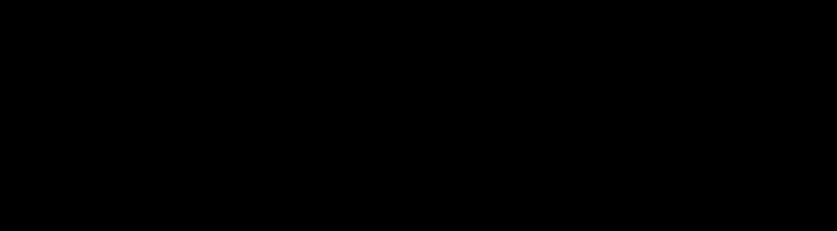



⁵⁵ Noonan, 18(a).

⁵⁶ Noonan, 18(c).

⁵⁷ Noonan, 18(c).



leverage its existing customer base in retail and food service to obtain these higher margins.⁵⁸

- 
 - **Infant nutritional ingredients:** WCB currently produces important ingredients used in the production of infant formula such as GOS (galactooligosaccharide) and the very high value product, lactoferrin. Murray Goulburn currently produces lactoferrin, but not GOS. The WCB acquisition means that Murray Goulburn will acquire an expanded source of key ingredients used in the manufacture of infant formula.⁶⁰
 - **Production flexibility:** The larger milk pool and additional plant capabilities obtained by the WCB acquisition will enable Murray Goulburn to optimise product mix in response to movements in dairy commodity prices thus allowing it to swing production to higher products with higher margins.⁶¹
- (d) **Global scale and export growth opportunities:** the WCB acquisition adds significantly to the scale of Murray Goulburn's operations and will move it into the top 20 global dairy processors ranked by milk intake. Murray Goulburn expects that this increased scale and efficiency will enhance its ability to leverage its existing relationships with premium customers to offer more innovative products.⁶²
- (e) **Significant operational synergies:** the WCB acquisition is expected to result in substantial on-going synergies which are discussed in more detail in section 21. A summary of the total synergies 



⁵⁸ Noonan, 18(c).

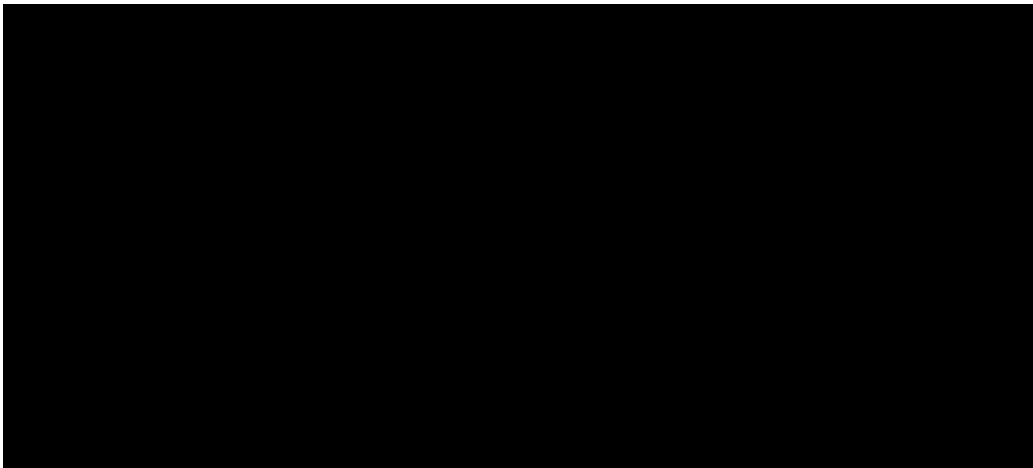
⁵⁹ Noonan, 18(c).

⁶⁰ Noonan, 18(c).

⁶¹ Noonan, 18(c).

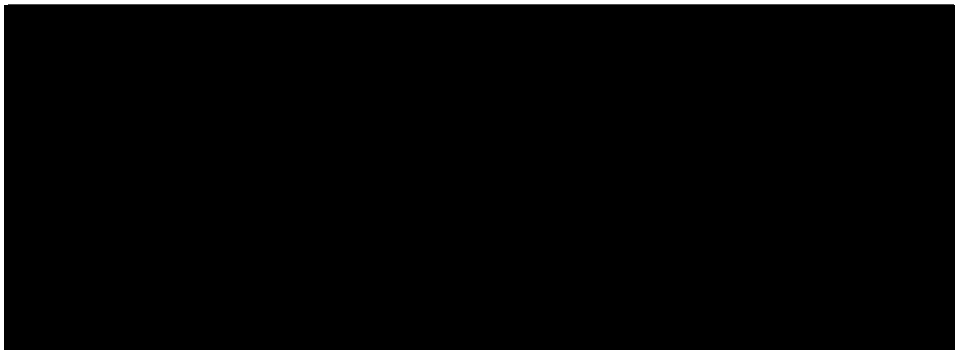
⁶² Noonan, 18(d).

⁶³ Noonan, 18(e).



- (f) **Complementary to existing Murray Goulburn capex and growth aspirations:** the WCB acquisition is expected to complement some of Murray Goulburn's strategic investment projects and may reduce some capital expenditure. These include, for example, the projects identified in the following table. While Murray Goulburn considers that substantial savings are likely to arise from these benefits, [REDACTED] Murray Goulburn did not include them in the assessment of likely synergy savings because Murray Goulburn have not been able to undertake due diligence on WCB and Murray Goulburn have therefore adopted a conservative approach to the assessment of synergies.⁶⁴

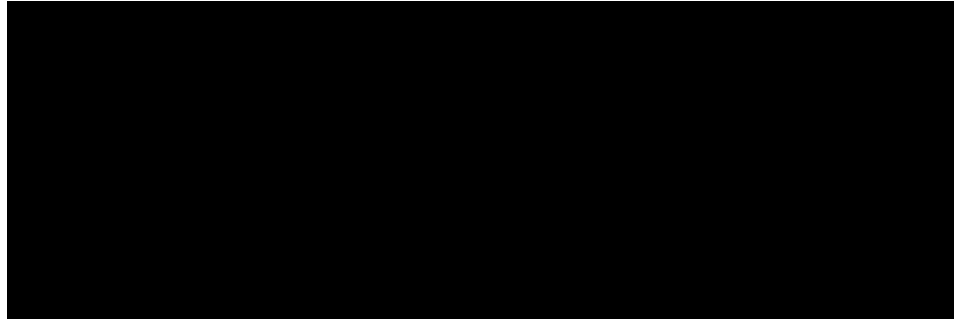
Project	Status of Murray Goulburn's Project/initiatives	Impact of WCB acquisition
Pasteurised milk (Coles contract)	10 year contract with Coles. Factories to service contract due for completion by July 2014. Initial total volumes from these factories are expected to be [REDACTED]	WCB's 30 million litre fresh milk business provides opportunities for operating expenditure synergies by consolidating volumes into one of Murray Goulburn's factories.



⁶⁴ Noonan, 18(f).



Project	Status of Murray Goulburn's Project/initiatives	Impact of WCB acquisition
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73 Murray Goulburn also considers that its acquisition of WCB will achieve the following benefits.⁶⁵

- Creation of Australia's leading integrated dairy food company:
 - Forecast annual revenues in FY2014 of \$3.2 billion;
 - Annual milk intake in excess of four billion litres from more than 3,000 suppliers;
 - Nine processing facilities employing almost 2,500 people predominately in rural and regional Australia;
 - Approximately one million tonnes of annual dairy production consisting of domestic and export ingredients products, domestic and export retail products, and nutritionals;
 - Diversified upstream production base in Australia's best producing dairy regions;
 - Export sales of \$1.4 billion in FY2013, to customers in more than 60 countries;
- Necessary scale, market reach and efficiencies to capture the benefits of an historic growth opportunity created by the emerging affluence of Asian consumers.
- 100% Australian farmer control, ensuring the benefits accruing from the combination will flow to farmer suppliers and their respective communities.
- Maintaining of key co-operative objectives, being the maximising of total farm gate returns for local dairy farmers in contrast to the objective of maximising dividends to foreign shareholders.
- Capacity and capability to leverage leading domestic and international brands including Devondale, Murray Goulburn, Liddells, Cobram, Great Ocean Road and Sungold to new domestic and international markets.
- Resolute focus on the success and best interests of its operating areas in Australia's principal dairy regions, which will encourage and drive further investment in the domestic dairy sector and local communities, in contrast to the risk of being sidelined as a minor participant in a large multinational.

⁶⁵ Noonan, DMN1.



- Substantial opportunities for existing WCB and Murray Goulburn employees in an enlarged group with national and global reach.⁶⁶

3.3 Indicate whether the acquisition involves proposed ancillary arrangements and describe the proposed arrangements.

74 Not applicable.

4 Background information

4.1 Describe the industry sector(s) to which the acquisition relates.

75 The acquisition takes place in the dairy industry. This section describes:

- (a) The production and supply of raw milk; and
- (b) The processing of milk and manufacture of dairy products.

Production and supply of raw milk

Milk production in Australia

76 The Australian dairy industry is Australia's third largest agricultural industry, being worth over \$4 billion per year.⁶⁷ Dairy farming is well-established in all temperate and some sub-tropical areas of Australia.⁶⁸

77 South Eastern Australia, which comprises Victoria, Tasmania, South Australia and southern New South Wales, currently produces approximately 75% of Australia's raw milk.⁶⁹

78 Between FY2002 and FY2012:

- (a) Australia's production of milk has significantly declined, from 11.271 billion litres to 9.48 billion litres;⁷⁰
- (b) Australia's number of dairy cows has significantly declined from 2,123,000 cows to 1,630,000 cows;⁷¹
- (c) In Victoria and South Australia, the number of dairy cows has significantly declined from 1,437,000 cows to 1,136,000 cows;⁷² and
- (d) Victoria's total dairy farm area has significantly reduced from [REDACTED]

79 The table below summarises the number of dairy cows, the milk yield per cow, and milk production in Australia for FY2013:

⁶⁶ Extracted from Murray Goulburn's ASX announcement dated 18 October 2013 in respect of its initial takeover offer to purchase WCB for \$7.50 per share (attached RAP57).

⁶⁷ Poole, 101.

⁶⁸ Statement of Christopher Phillips (**Phillips**), 24.

⁶⁹ Phillips, 25.

⁷⁰ ABARES statistics; Poole, RAP20, 103; Phillips, 154.

⁷¹ ABARES statistics; Poole, RAP20, 103. Phillips, 63.

⁷² ABARES statistics; Poole, 103, RAP20.



Financial year	Dairy cows '000	Milk yield per cow (L)	Milk production (billions of litres)
2001–02	2,123	5,309	11.271
2002–03	2,050	5,038	10.328
2003–04	2,038	4,944	10.076
2004–05	1,942	5,215	10.127
2005–06	1,880	5,367	10.089
2006–07	1,796	5,336	9.583
2007–08	1,640	5,624	9.223
2008–09	1,676	5,602	9.388
2009–10	1,596	5,653	9.023
2010–11	1,589	5,727	9.101
2011–12	1,630	5,816	9.480
2012–13	1,650	5,575	9.200

80 The production of raw milk in Australia is expected to increase to approximately 9.4 billion litres in FY2014.⁷³

81 The key factors that have contributed to Australia's decline in milk production since 2002 have been:

- (a) The deregulation of daily pasteurised drinking milk production and supply in 2000, which removed milk quotas and guaranteed raw milk prices, and led to lower raw milk prices for dairy farmers;
- (b) Droughts in 2003, 2004, 2006 and 2007, and floods and cyclones in 2005 and 2011;
- (c) The global financial crisis in 2008, and significantly lower global dairy commodity prices.⁷⁴

⁷³ Poole, 102

⁷⁴ Phillips, 67.



82 These factors in particular have contributed to significantly lower farmer confidence, and in 2013, over 40% of dairy farmers surveyed by Dairy Australia said that they had no plan to expand milk supply in the next three years.⁷⁵

83 Although there have been significant reductions in Australian dairy production over the past decade, there is potential in south eastern Australia to convert additional land to dairy farming and to increase dairy production.

Comparison with milk production in New Zealand

84 By contrast, in New Zealand, between FY2002 and FY2012:

- (a) New Zealand's production of milk has significantly increased, from 13.607 billion litres to 19.129 billion litres;⁷⁶
- (b) New Zealand's number of dairy cows has significantly increased from 3,692,703 cows to 4,634,226 cows;⁷⁷ and
- (c) New Zealand's total dairy farm area has significantly increased from 1.4 million hectares to 1.64 million hectares.⁷⁸

85 Although milk production in Australia declined between FY2002 and FY2012, and over the same period, milk production in New Zealand increased, milk productivity has increased in both countries during that period at approximately the same rate. Further, milk productivity is higher in Australia.⁷⁹ In this context, milk productivity refers to milk yield per cow, as recorded in the tables following paragraphs [90] and [101].

86 The contrast between Australian and New Zealand milk production over the last 10 years is captured in the following charts. This demonstrates that Australian dairy production declined by nearly 2% p.a., Australian exports are down by 40% over the last decade and Australia's share of the global export market has halved from 15% to 8%.

⁷⁵ Phillips, 169.

⁷⁶ Dairy New Zealand, *New Zealand Dairy Statistics 2011/12*; in addition see Report of Michael Craig Norgate at 3.1.4 in relation to New Zealand's milk production in 2000/2001.

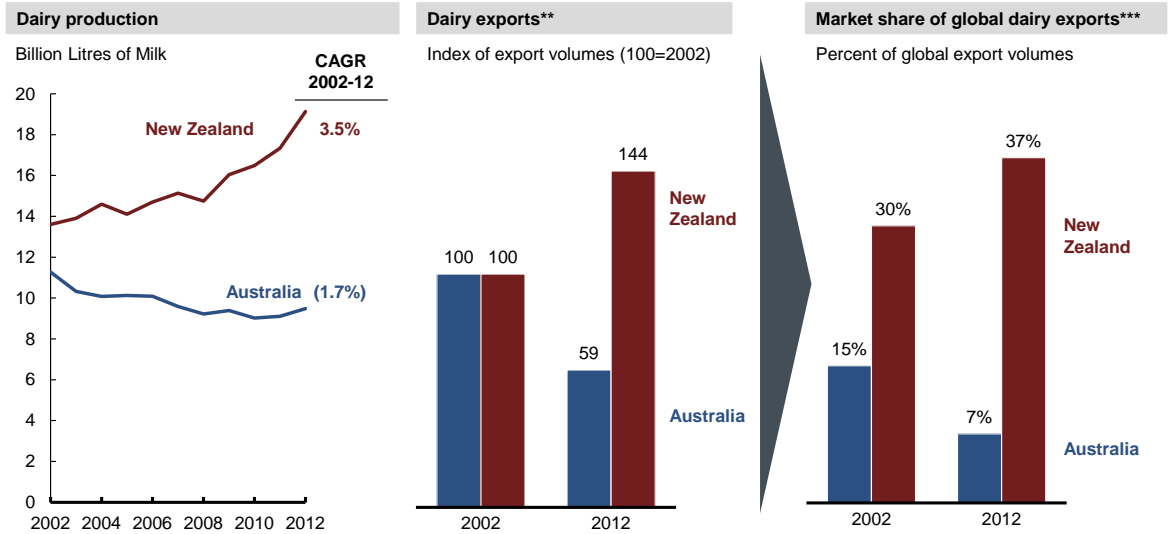
⁷⁷ Dairy New Zealand, *New Zealand Dairy Statistics 2011/12*.

⁷⁸ Dairy New Zealand, *New Zealand Dairy Statistics 2011/12*.

⁷⁹ Dairy New Zealand, *New Zealand Dairy Statistics 2011/12*.



AUSTRALIAN AND NEW ZEALAND DAIRY PRODUCTION AND EXPORTS*



* All figures are for June year-end
 ** Export volume index includes milk powder, cheese, butter, casein and other dairy products on a milk equivalent basis
 *** Estimated share of global milk, whole milk powder, skim milk powder, cheese, butter and casein exports on a milk equivalent basis
 Source: ABARES; Dairy NZ; Dairy Australia

87 The table below summarises the number of dairy cows, the milk yield per cow, and milk production in New Zealand for each financial year from FY2002 to FY2012:

Financial year	Dairy cows	Milk yield per cow (L)	Milk production (billions of litres)
2001-02	3,692,103	3,680	13.607
2002-03	3,740,637	3,720	13.906
2003-04	3,851,302	3,737	14.599
2004-05	3,867,659	3,574	14.103
2005-06	3,832,145	3,763	14.702
2006-07	3,916,812	3,791	15.134
2007-08	4,012,867	3,567	14.745
2008-09	4,252,881	3,710	16.044



Financial year	Dairy cows	Milk yield per cow (L)	Milk production (billions of litres)
2009–10	4,396,675	3,642	16.483
2010–11	4,528,736	3,829	17.339
2011–12	4,634,226	4,128	19.129

Processing milk and manufacturing dairy products

- 88 There are dairy processing plants operating in all state of Australia.⁸⁰
- 89 The main finished dairy products and ingredients manufactured from raw milk are daily pasteurised milk, UHT milk, cheeses, butters, milk powders, whey powders, milk fats, speciality milk proteins and nutritional products (including infant formula).⁸¹
- 90 Common elements in processing raw milk and manufacturing dairy products include:
- (a) Collecting raw milk from farmers and keeping it cool;
 - (b) Testing raw milk for any harmful microorganisms; and
 - (c) Heat treating raw milk (either pasteurising it or subjecting it to ultra heat treatment to extend its shelf-life) to destroy pathogens.⁸²
- 91 After the raw milk is heat treated, it can be put through different processes depending on the end product being produced. For example:
- (a) Pasteurised milk may be centrifugally separated into cream and skim milk;
 - (b) Cream may be further processed by churning it into butter;
 - (c) Pasteurised milk may be standardised, evaporated and spray dried into full cream milk powder; and
 - (d) Pasteurised milk may be standardised, given start and coagulant addition, and by having the curds separated from the whey, turned into cheese.⁸³

An exhaustive list of the processes and dairy end-products that can be made with raw milk is graphically depicted in the following flowchart.⁸⁴

⁸⁰ Phillips, 24.

⁸¹ Mentiplay, 11.

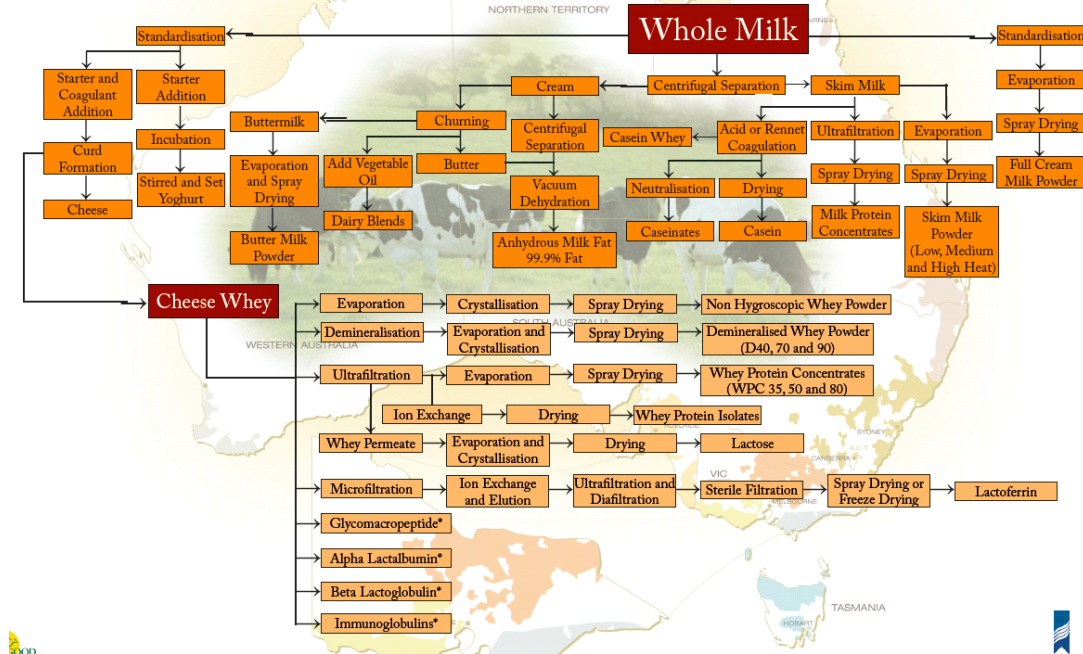
⁸² Mentiplay, 12-14.

⁸³ Mentiplay. 14-15.

⁸⁴ Beniston, 24, MB1.



Australian Dairy INGREDIENTS



92 Because most dairy products use only components of whole raw milk, or are by-products of other dairy products, there is an interdependence of product volumes for many dairy products. For example:

- (a) Increased production of skim milk and its derivative products increases the production of cream (because it is made by centrifugally separating cream from the skim milk); and
- (b) Decreased production of butter will increase the volume of cream available for supply.⁸⁵

93 Producing the same volume of different dairy products also may require different volumes of raw milk. For example:

- (a) More raw milk is required to produce 250g of skim milk powder as compared with infant nutrition powder, because additional ingredients such as whey, casein, vegetable oils, lactose, vitamins and minerals are required to produce infant nutrition powder; and
- (b) More raw milk is required to produce 250g of butter as compared with 250g of Swiss-style yoghurt, because fruit, sugar, starch, pectin and gelatin is added to the latter.⁸⁶

94 Because of fluctuations in raw milk production throughout the year, processing plants are not used in a uniform manner all year round. Processing plants, or parts of plants, are regularly 'wound down' and 'wound up' each year, and the winding down or up process

⁸⁵ Beniston, 24.

⁸⁶ Mentiplay, 16.



takes approximately 2 to 3 months lead time to organise, and involves managing labour and maintenance of the plants.⁸⁷

95 Most Australian dairy processors are able to adjust their production of dairy ingredient products according to demand trends in Australia and in international markets.⁸⁸

4.2 Describe the area(s) of overlap in the operations of the Applicant and Target and any related bodies corporate (the merger parties).

96 Murray Goulburn and WCB principally overlap in the following broad areas:

- (a) The collection of raw milk in south east Australia, especially in Victoria and South Australia;
- (b) The manufacture of processed and semi-processed dairy products in south eastern Australia, particularly in western Victoria; and
- (c) The wholesale supply of certain processed and semi-processed dairy products in Australia.

The collection of raw milk

97 Historically, Murray Goulburn has treated its raw milk collection as spanning three regions, being the regions where it purchases the majority of its raw milk:

- (a) North, which comprises northern Victoria and the Riverina region of New South Wales;
- (b) West, which comprises south-western Victoria and South Australia; and
- (c) Gippsland, which comprises the Gippsland region of Victoria.

There is, however, no technical or operational reason to adopt any rigid division between these regions.

98 In Tasmania, Murray Goulburn does not collect raw milk from farmers directly, and instead purchases it from a joint venture, Tasmanian Dairy Products.⁸⁹ Murray Goulburn processes approximately 180 million litres of milk in Tasmania via its Edith Creek site and Tasmania Dairy Products.⁹⁰

99 From June 2013 onwards, Murray Goulburn has also commenced collecting milk in central and northern New South Wales, and expects to acquire [REDACTED] litres during FY2014.⁹¹

100 During FY2013, Murray Goulburn acquired the following volumes of raw milk from farmer suppliers in each relevant region:⁹²

⁸⁷ Mentiplay, 44.

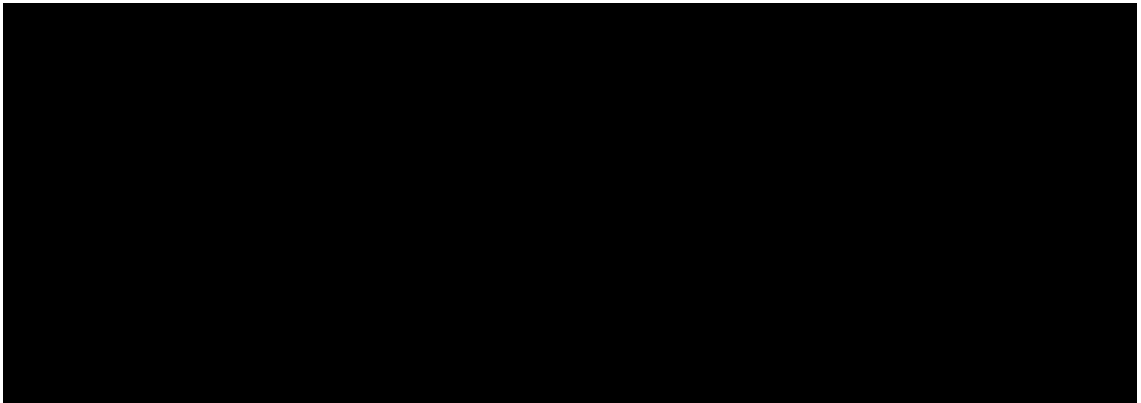
⁸⁸ Beniston, 49.

⁸⁹ McDonald, 20.

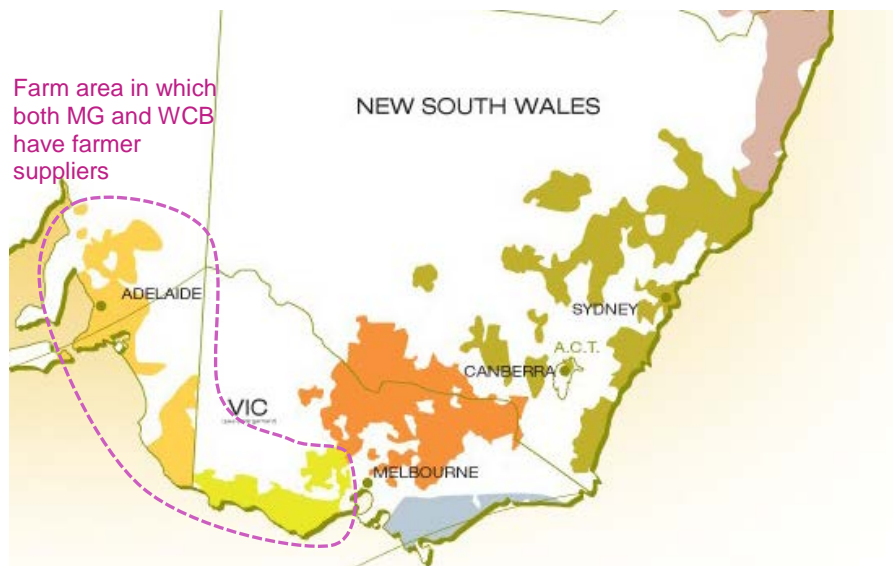
⁹⁰ Poole, 112.

⁹¹ Poole, Confidential Exhibit RAP16.

⁹² Poole, Confidential Exhibit RAP16.



101 WCB acquires approximately 9.5% of Australia's milk supply and, like Murray Goulburn, collects milk from farms located in south eastern Australia (particularly in South Australia and western Victoria). The areas in which Murray Goulburn and WCB's milk procurement overlaps is in the map in RAP30. The relevant section is reproduced below.⁹³



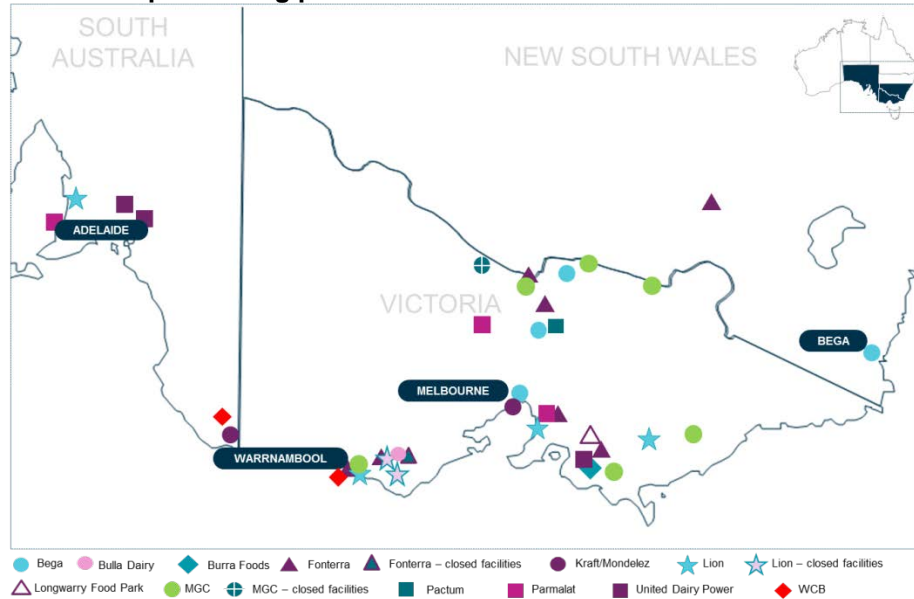
102 The map, which is reproduced below, shows the location of dairy processing plants operated by Murray Goulburn, WCB and other dairy processors.⁹⁴

⁹³ Poole, 115, 120, RAP30.

⁹⁴ Mentiplay, KM9.



Location of milk processing plants in South Eastern Australia



103 Raw milk may be processed at a plant in the area in which it is supplied, or it may be transported to a different area for processing.⁹⁵ Raw milk from a farm in a particular area may not be processed by the processor with whom the supplier has a supply agreement. Instead, it may be processed by another processor under a “milk swap” arrangement, or otherwise sold to another processor.⁹⁶ Because milk is regularly transported and swapped between processors, both within regions and inter-regionally, a processor does not need to have a processing plant in the same area as the farm from which milk is supplied. For more information on milk swaps, see the response to question 4.4 below.

The manufacture of processed and semi-processed dairy products

Murray Goulburn’s processing plants

104 Murray Goulburn has six processing plants in Victoria and one processing plant in Tasmania, as set out below:

Location of plant	Products manufactured
Cobram (north Victoria)	Infant formula Speciality ingredients Cheese (bulk & retail) Whey powder Whey protein concentrate whey protein isolate Lactose Specialty whey proteins
Rochester (north Victoria)	Cheese Full cream milk powder Whey powder

⁹⁵ Poole, 142.

⁹⁶ Poole, 142



Location of plant	Products manufactured
	Whey protein concentrate Lactose Specialty powders
Kiewa (north Victoria)	Cream Cheese Retail milk / cream
Koroit (south-western Victoria)	Full cream milk powder Fat filled milk powder Skim milk powder Anhydrous milk fat Butter and milk protean concentrate Toddler formulas
Leongatha (Gippsland)	Butter Retail butter / spreads / cream UHT products Casin/casينات Milk protein concentrate Whey powders Lactoferrin Milk minerals
Maffra (Gippsland)	Skim milk powder Butter milk powder Anhydrous milk fat Butter Speciality ingredients Calf milk replacer
Edith Creek (Tasmania)	Speciality UHT products

- 105 Murray Goulburn has committed to building a milk processing plant at Laverton in Melbourne and a further milk processing plant at Erskine Park in Sydney. These plants are expected to be operational by mid-2014.⁹⁷
- 106 Murray Goulburn has an integrated logistics centre located at Laverton North and a global distribution centre (including for frozen products) located at the Port of Melbourne.⁹⁸
- 107 Murray Goulburn's products are stored at its distribution centres until they are picked up as part of a customer order. Once an order is made, the products are transported from the distribution centres to a customer's location or the customer's own distribution centre, either by truck or train (for domestic transport) or by ship (for international transport).⁹⁹

⁹⁷ Mentiplay, 28.

⁹⁸ Statement of John Barnett (**Barnett**), 7.

⁹⁹ Barnett, 8.



108 The transportation chain described above is the process that is undertaken for the vast majority of Murray Goulburn’s products. However, there are instances where Murray Goulburn supplies its finished products on a different basis. Those instances include the transportation of products from:

- (a) processing facilities direct to customers;
- (b) processing facilities to other Murray Goulburn processing facilities; and
- (c) processing facilities to processing facilities operated by another dairy producer.¹⁰⁰

109 The transportation of products described in (b) and (c) above relates to ingredient products that are to be incorporated into other dairy products.¹⁰¹

WCB’s processing plants

110 WCB has been processing plants, both located in western Victoria and South Australia.

111 The following table summarises the production capability of WCB’s Australian processing plants:¹⁰²

Location	Products
Allansford (Victoria)	<ul style="list-style-type: none"> • Bulk Cheddar • Powders – whey, SMP • Milk • Butter & Cream
Mil Lel (SA)	Retail Cheese

The supply of processed and semi-processed dairy products in Australia

Supply of finished dairy products

112 The broad categories of finished dairy products that Murray Goulburn supplies to grocery retailers, food services wholesales, and route outlets in Australia are:

- (a) cheese;
- (b) UHT milk;
- (c) butter / spreads;
- (d) daily pasteurised milk;
- (e) flavoured milk;
- (f) dairy desserts and yoghurts;
- (g) milk powder; and

¹⁰⁰ Barnett, 9.

¹⁰¹ Barnett, 10.

¹⁰² Mentiplay, 67-68.



(h) cream (fresh and UHT).¹⁰³

113 Although WCB is predominantly involved in the supply of bulk ingredients, it also supplies finished dairy products. For example, WCB supplies cheese products, daily pasteurised milk and flavoured milk in Australia.¹⁰⁴

(i) Cheese (minor overlap)

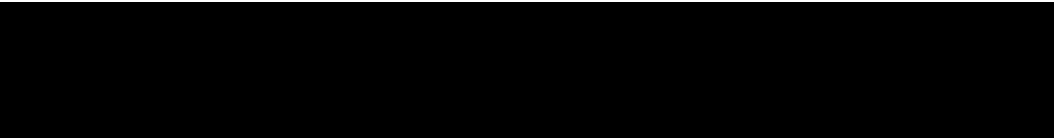
114 Cheese is derived from milk through a process that involves the addition of heat and the enzyme, rennet, which causes coagulation. The curds are separated from the whey and pressed into final form. There are a number of varieties of cheese, including cheddar and cheddar style cheeses, washed rind, blue, white mould, fresh unripened, processed (a blend of natural cheddar of different ages, melted and cooked with emulsifying salts and water), as well as reduced fat cheese varieties.¹⁰⁵

115 Murray Goulburn is a substantial supplier of both branded and private label cheese products to grocery retailers and food service customers. The principal cheese products supplied, both branded and private label, are block cheese, shredded cheese and processed cheese. Murray Goulburn also supplies cheese slices.¹⁰⁶

116 In relation to Murray Goulburn's supply to grocery retailers, package sizes include 250g, 625g and 1kg blocks, 550g and 600g shredded packets and 200g slices. Varieties supplied include: Light, Mild, Tasty, Vintage and Colby Cheddar, Cobram Vintage Cheddar as well as Mozzarella. Murray Goulburn also supplies Liddells lactose free cheese in 250g blocks and shredded.¹⁰⁷

117 In relation to food service supply, packaging ranges from 250g, 500g and 1kg to larger sizes such as 6kg, 10kg, 20kg and bulk bins. Primary products include Tasty, Vintage, Light, Mild, Mature and Colby Cheddar as well as mozzarella and pizza cheese. Murray Goulburn also supplies other cheeses to food service customers, including cream cheese, parmesan, romano, mascarpone and liquid cheddar.¹⁰⁸

118



119 WCB produces its own branded cheese product, Great Ocean Road (supplied to Coles). It is not a high selling product.¹¹⁰

(ii) UHT Milk (no overlap)

120 Long life milk is heated to a higher temperature than daily pasteurised milk. This results in a greater reduction in bacteria and heat resistant enzymes in comparison to milk that undergoes pasteurisation – giving it an extended shelf life. There is both branded and private label UHT milk available. Typical varieties are white UHT milk – full cream, reduced fat and skim, and flavoured UHT milk. In addition, lactose-free and added calcium UHT milk products are available, as well as non-dairy UHT milks, including soy

¹⁰³ Scott, 34.

¹⁰⁴ Scott, 200.

¹⁰⁵ Scott, 36.

¹⁰⁶ Scott, 38.

¹⁰⁷ Scott, 45.

¹⁰⁸ Scott, 48.

¹⁰⁹ Scott, 50.

¹¹⁰ Scott, 41.



UHT milk. UHT milk is generally supplied in packaging that ranges from 200 millilitres to 2 litres.¹¹¹

121 Murray Goulburn supplies varieties of white and flavoured UHT milk. It also supplies lactose-free UHT milk under its Liddells brand. Murray Goulburn does not supply soy UHT milk.¹¹²

122 WCB does not supply UHT milk.¹¹³

(iii) Butter and spreads

123 Butter is made through separating cream from milk, churning the cream until it thickens, and adding water and salt. There are many varieties of butter, including salted butter, unsalted butter, cultured butter and clarified butter, which is almost pure milk fat and used mainly in cooking.¹¹⁴

124 Spreads are a mixture of butter and edible vegetable oils making the mixture spreadable directly from the refrigerator. Spreads generally retain the taste of butter.¹¹⁵

125 Murray Goulburn supplies:

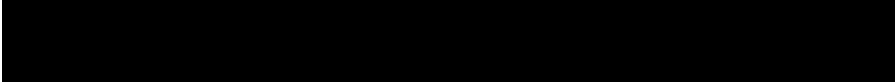

- (a) Devondale and private label butter to grocery retailers;
- (b) Devondale and private label spreads to grocery retailers; and
- (c) butter and spreads to food service customers.¹¹⁶


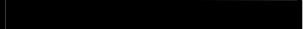
126 Murray Goulburn is not aware of WCB supplying retail butter or spreads in Australia.¹¹⁷

(iv) Daily pasteurised milk (minor overlap)

127 Daily pasteurised milk is milk which has been pasteurised, that is, undergone a process whereby it is partially sterilised. There are a number of varieties of daily pasteurised milk, including full cream, fat reduced and skim milk, and there are both branded and private label daily pasteurised milk varieties available.¹¹⁸

128 Murray Goulburn supplies daily pasteurised milk from its facility in Kiewa to:

- (a) 
- (b) 
- (c) approximately 10 million litres of Kiewa and Devondale branded milk in the Kiewa Valley via the route trade.¹¹⁹

129 , Murray Goulburn has recently secured a ten year contract for the supply of private label daily pasteurised milk to Coles (to come into effect 1 July 2014). 

¹¹¹ Scott, 55.

¹¹² Scott, 58.

¹¹³ Scott, 63.

¹¹⁴ Scott, 74

¹¹⁵ Scott, 75

¹¹⁶ Scott, 78

¹¹⁷ Scott, 84

¹¹⁸ Scott, 92.

¹¹⁹ Scott, 92.



[REDACTED]
Murray Goulburn is in the process of building facilities in Laverton, Victoria and Euston Park, New South Wales that will allow it to manufacture milk efficiently for this upcoming contract. Both facilities are located within five kilometres of Coles' distribution centres.¹²⁰

130 WCB supplies Sungold and Great Ocean Road milk, and some private label milk.¹²¹

(v) Flavoured milk (minor overlap)

131 There are two broad categories of flavoured milk – daily pasteurised flavoured milk and UHT flavoured milk (of which there are soy based varieties). Flavoured milk is generally supplied in packaging that ranges from 200 millilitres to 2 litres.¹²²

132 In relation to daily pasteurised flavoured milk, Murray Goulburn supplies:

(a) small grocery shops and cafes/takeaway shops in the Kiewa Valley with flavoured daily pasteurised milk in 600 millilitre packaging; and

(b) [REDACTED]

133 In relation to UHT flavoured milk, Murray Goulburn supplies grocery retailers throughout Australia with milk Devondale branded in 1 litre packaging as well as its 'Moo' branded flavoured milk product which is sold in 200 millilitre packets of six and generally targeted at children.¹²⁴

134 WCB supplies small volumes of flavoured milk.¹²⁵

(vi) Dairy desserts (no overlap)

135 Dairy desserts comprise a range of fresh and UHT-based custard products.¹²⁶

136 Murray Goulburn currently supplies:

(a) [REDACTED]

(b) [REDACTED]

137 Murray Goulburn is not aware of WCB supplying dairy desserts in Australia.¹²⁸

(vii) Yoghurt (no overlap)

138 Yoghurt is a type of cultured dairy food. It is made by the addition of live starter cultures to milk. These bacterial cultures cause fermentation of lactose. There are a number of types of yoghurt, including natural, Greek-style, flavoured, full cream, low fat and no fat varieties. Additionally, yoghurt is sold in many sizes, ranging from 140 gram tubs to 1 kg tubs.¹²⁹

¹²⁰ Scott, 97.

¹²¹ Scott, 101.

¹²² Scott, 102.

¹²³ Scott, 111.

¹²⁴ Scott, 122.

¹²⁵ Scott, 115.

¹²⁶ Scott, 119.

¹²⁷ Scott, 125.

¹²⁸ Scott, 126.

¹²⁹ Scott, 130.



139 Murray Goulburn has entered into a joint venture with Danone through which Murray Goulburn supplies milk to Danone for its yoghurt production. Danone's manufacturing plant is located at Murray Goulburn's Kiewa facility. [REDACTED]

140 Murray Goulburn is not aware WCB supplying yoghurt in Australia.¹³¹

(viii) Milk powder (minor overlap)

141 Milk powder is made by evaporating milk to dryness. It has a far longer shelf life than liquid milks and, due to its low moisture content, does not require refrigeration. There are full cream and skim varieties of milk powder.¹³²

142 Murray Goulburn supplies the following milk powder products:

(a) Devondale branded and private label milk powder in 2kg bags for grocery retailers; and

(b) milk powder products to food service customers.¹³³

143 Murray Goulburn is not aware of WCB supplying milk powder in Australia.

(ix) Cream (minor overlap)

144 Cream is the fat component of milk. During production, centrifugal force is used to accelerate the separation of the cream from the milk which is placed in large vats. There are a number of varieties of cream including, reduced fat, double cream, pure cream, thickened cream (which contain additives that act as thickening agents), whipped and clotted cream. In addition, UHT cream (which has undergone ultra heat treatment to extend its shelf life) is available for sale in vacuumed sealed cartons. Cream has many uses, including as an accompaniment to desserts or fruit, a filling in desserts and it is used in sauces.¹³⁴

145 Murray Goulburn supplies:

(a) Devondale branded fresh cream;

(b) private label fresh cream; and

(c) UHT cream.¹³⁵

146 Murray Goulburn is not aware of WCB supplying cream in Australia.

Supply of bulk ingredients

147 Murray Goulburn produces a comprehensive range of bulk ingredient products. In the 2013 financial year, Murray Goulburn produced approximately [REDACTED] of ingredients, which it supplied in Australia and to approximately 50 export markets.¹³⁶

148 The Ingredients portfolio can be divided up along a value continuum, with commodity products at the low end of the continuum and specialty Ingredients at the upper end. Murray Goulburn's strategic objective is to produce as many products at the upper end of the continuum as possible. Of the milk that is processed by Murray Goulburn into bulk

¹³⁰ Scott, 131.

¹³¹ Scott, 143.

¹³² Scott, 138.

¹³³ Scott, 143.

¹³⁴ Scott, 145.

¹³⁵ Scott, 152.

¹³⁶ Beniston, 25, 26, 29, 32, 36.



ingredients, approximately [REDACTED] currently goes into the production of base commodities, and [REDACTED] is produced into customised, value add or specialty ingredients.¹³⁷

149 Murray Goulburn supplies the following bulk non-liquid ingredients (moving from the lower end of the value spectrum to the higher end of the value spectrum):

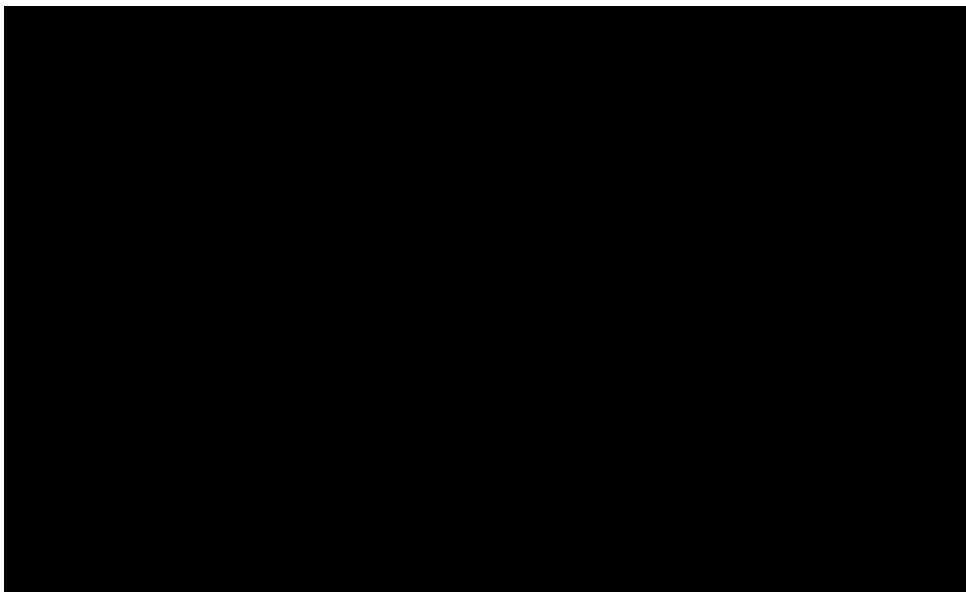
- (a) base commodities, which are products that include little or no product differentiation and limited supply security;
- (b) customised ingredients, which include minor product differentiation and higher supply security;
- (c) value add ingredients, which are characterised by significant differentiation, high supply security and high levels of customer service;
- (d) nutritionals, which include infant, toddler and adult milk formulas; and
- (e) specialty ingredients, which are characterised by the highest product differentiation.¹³⁸

150 Murray Goulburn also supplies bulk liquid ingredients, including bulk cream, skim milk, semi-skim milk, wholemilk concentrate and milk permeate.¹³⁹

151 WCB currently provides a range of bulk ingredients products in Australia, including cheese, skim milk powders, butter milk powders, butter and whey protein concentrates.

152 Both Murray Goulburn and WCB currently supplies bulk cream into Victoria and South Australia. The projected volumes and estimated shares in the supply of bulk cream for FY2014 are contained in the table below:

Company	Volume (tonnes)	Volume share
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¹³⁷ Beniston, 41.

¹³⁸ Beniston, 25, 26, 29, 32, 36.

¹³⁹ Beniston, 41.



Company	Volume (tonnes)	Volume share
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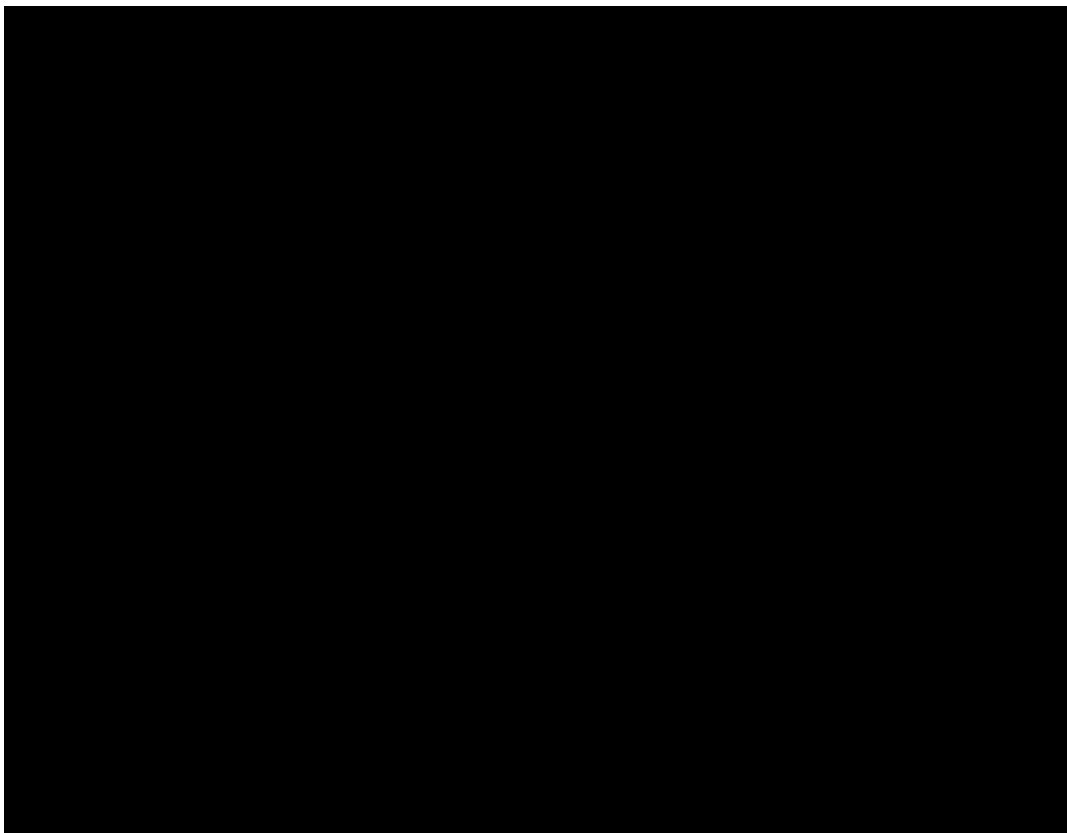


153 WCB does not currently supply bulk processed milk to customers located in Australia.

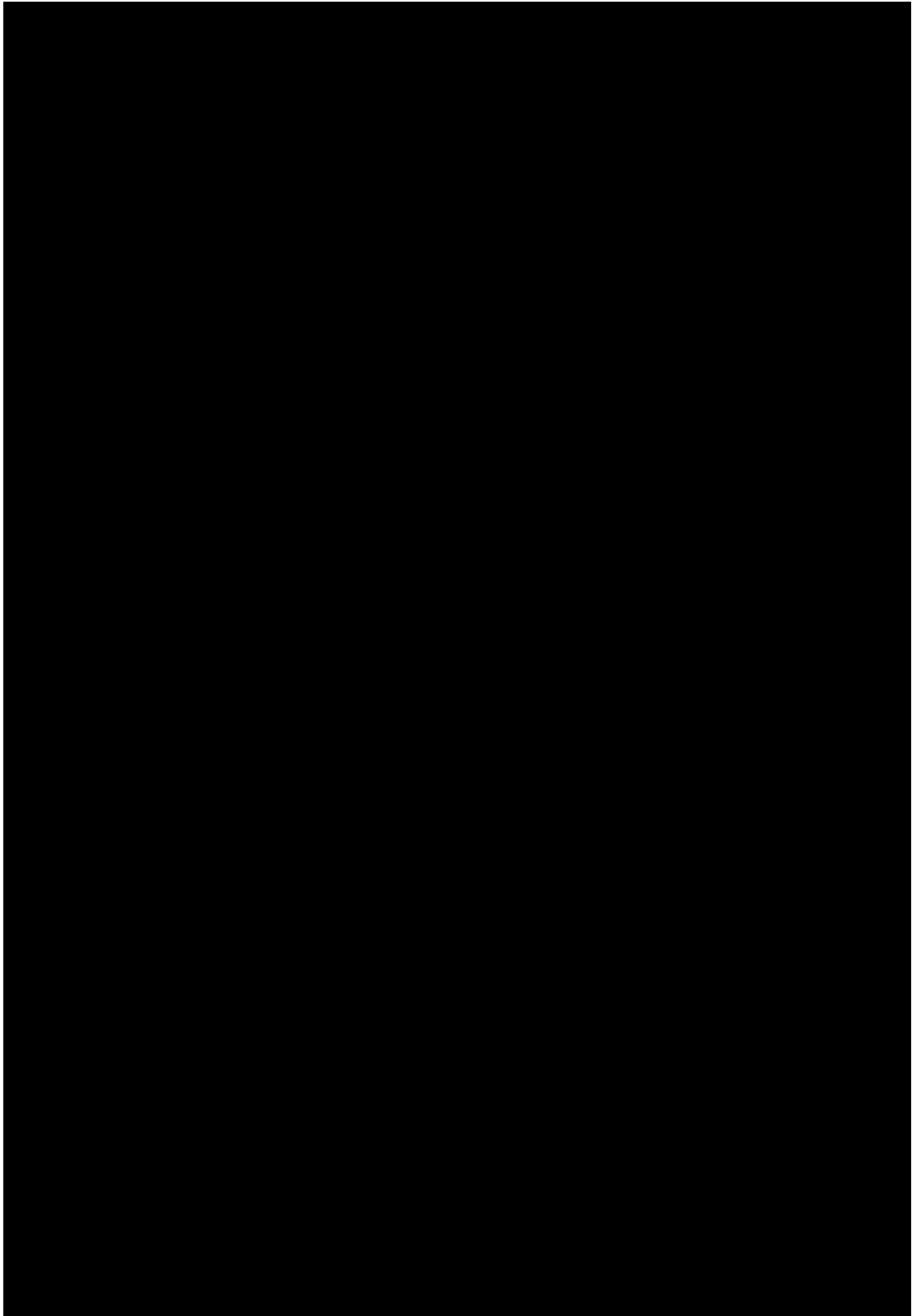
154 Murray Goulburn supplies a small volume of Nutritional products in Australia. Murray Goulburn does not believe that WCB currently supplies equivalent products in Australia.

155 There are no geographical limitations on where Murray Goulburn is able to transport finished products, either domestically or internationally, so long as the shelf life of the products are managed. However, Murray Goulburn does not transport many products with a short shelf life, save for yoghurts, which have shelf life of approximately 21 days.¹⁴⁰

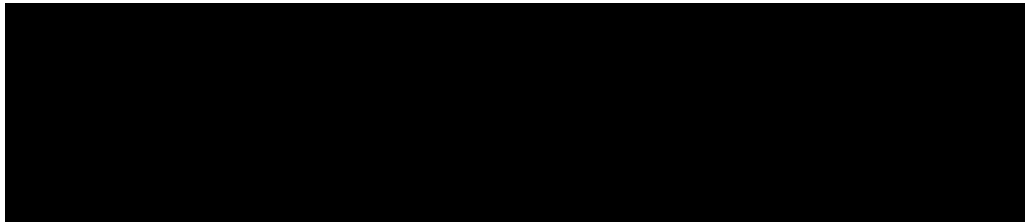
156



¹⁴⁰ Beniston, 42, Barnett 42.



¹⁴¹ Barnett, Confidential Annexure JWB5.



158 WCB produces a total of over 130,000 tonnes of dairy products per year that are sold in Australia and to various customer from over 40 countries around the world.¹⁴²

159 WCB also ships a substantial amount of its products overseas. Approximately 46% of WCB's FY13 sales by value were exported, largely to Asian markets and the Middle East, plus sales to the United States, Europe and South America.¹⁴³

160 WCB would require similar distribution capabilities and facilities as Murray Goulburn in order to transport its dairy products both domestically and internationally.

161 Murray Goulburn has capacity for further storage and distribution of products both domestically and internationally, and the ability to increase its capacity.¹⁴⁴ The domestic and international distribution of dairy products would overlap. The proposed merger would enable Murray Goulburn to consolidate the two distribution networks.¹⁴⁵

4.3 Provide details of any acquisitions made by the merger parties and any other acquisitions made in the industry sector(s) during the past five years.

162 The table below identifies acquisitions made in the dairy industry since 2008:¹⁴⁶

2008	DFG/ Australian Cooperative Foods demutualisation Bega purchase of De Cicco Industries
2009	National Foods purchase of DFG
2010	The post-GFC share acquisitions in WCB by Murray Goulburn and Bega
2011	The restructuring of National Foods into Lion Dairy and Drink Bega's stock exchange listing and full purchase of Tatura Lactalis' purchase of Parmalat

163 Neither Murray Goulburn nor WCB has acquired another Australian dairy processor in the last five years. In 2006 Murray Goulburn purchased Classic Foods, a packer of UHT foods and drinks, in Tasmania.

¹⁴² WCB Target Statement regarding Saputo's offer, 44

¹⁴³ WCB Target Statement regarding Saputo's offer, 44

¹⁴⁴ Barnett, 37-39.

¹⁴⁵ Barnett, 59.

¹⁴⁶ Phillips, 27.



4.4 Provide details of any existing vertical or horizontal relationships between the merger parties and related bodies corporate.

Swaps and commercial sales between competitors

164 Murray Goulburn enters into inter-regional as well as intra-regional exchanges of raw milk with other dairy companies. As described earlier, a swap occurs when one processor (A) acquires milk from an area in which it has less processing capacity and supplies it to a local processor (B), in return for that processor B supplying processor A with milk from the regions in which processor A has greater processing capacity.

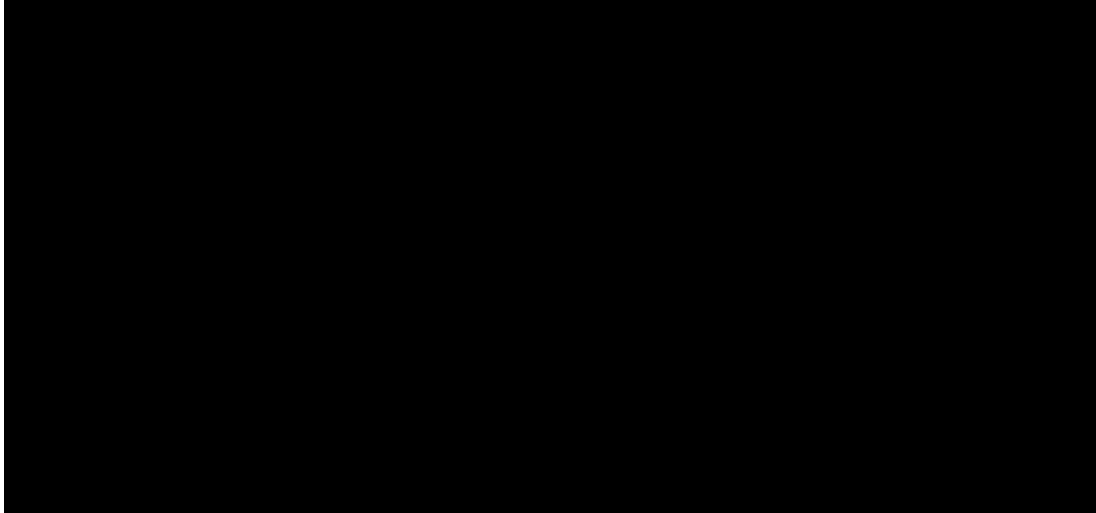
165 Murray Goulburn regularly swaps bulk raw milk with [REDACTED]
[REDACTED]¹⁴⁷ – both within the same region and across different regions.

166 Murray Goulburn also enters into commercial arrangements to buy milk from, or sell milk other dairy processors. The difference between a swap and a commercial sale (or purchase) is that a swap is an agreement for the delivery of milk of similar volume by each party, whereas a commercial sale involves a unilateral transaction.

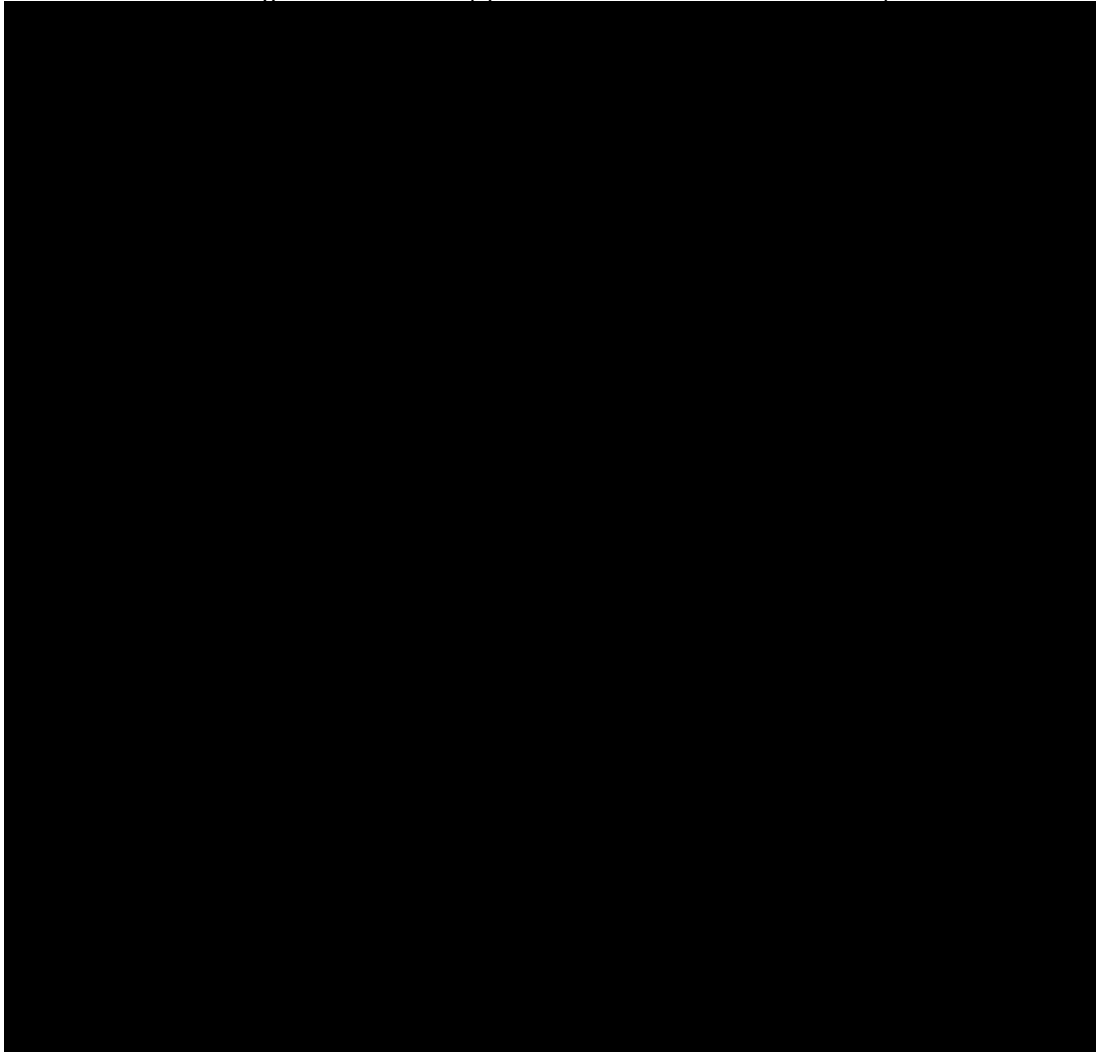
167 [REDACTED]

¹⁴⁷ Poole, 153.

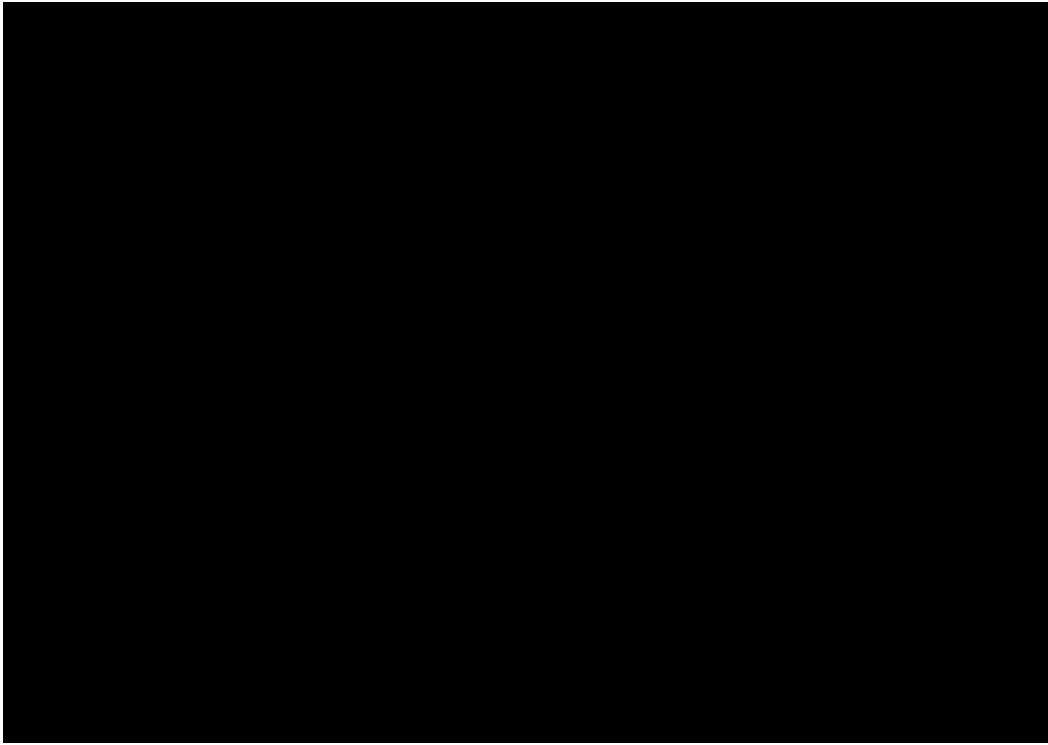
¹⁴⁸ McDonald, Confidential Annexure MM7.



168 The table below sets out Murray Goulburn's estimates of the volume of milk that Murray Goulburn will exchange with other dairy processors for the 2014 financial year.¹⁴⁹



¹⁴⁹ Poole, 156



169 Murray Goulburn has an agreement with [REDACTED]

4.5 Describe any other cooperative agreements to which any of the merger parties is a party.

170 As noted in the Murray Goulburn’s 2013 Annual Report, Murray Goulburn is party to the following joint ventures:

Australian Milk Products Pty Ltd Australian Milk Products Pty Ltd is a joint venture company between Australian Dairy Goods Pty Ltd and Murray Goulburn. The joint venture company distributes and markets Australian dairy products in Latin America.

INTERMIX Australia INTERMIX Australia’s hi-tech production facility in Queensland manufactures a diverse range of dry-mix finished ingredients as well as blends and pre-mix additives for end-use applications in the beverage, dairy, bakery, confectionery, nutritional and snack sectors of the food and beverage processing industry. *INTERMIX is a joint venture between Erie Foods International (US), Mitsubishi Corporation (Japan) and Murray Goulburn – all of which joint venture partners each have 33% ownership of INTERMIX.*

Provico Murray Goulburn holds 51% of all voting shares in Provico Pty Ltd. Provico products have been formulated to cater for the special dietary and nutritional

¹⁵⁰ Poole, 149.



requirements of younger animals.

**Danone
Murray
Goulburn**

Murray Goulburn has entered a joint venture with French food company Danone to market yoghurt and other fresh dairy products in Australia.

**Dairy
Technical
Services Food
Laboratories**

Murray Goulburn holds a 25.3% interest in DTS Food Laboratories which provides independent analytical services necessary to meet food safety needs. Owned by members of the food industry, the company has operated for the dairy industry for more than 50 years.

**Tasmanian
Dairy
Products**

Tasmanian Dairy Products is a dairy processing joint-venture in north-west Tasmania which produces high quality milk powders and dairy fat products. Murray Goulburn is the majority shareholder in this shared investment with Mitsubishi Corporation and local Tasmanian investors.

171 As noted in WCB's 2013 Annual Report, WCB is party to the following joint ventures:

**Great Ocean
Ingredients**

WCB and Royal FrieslandCampina entered into a 50:50 joint venture in 2007 to form Great Ocean Ingredients. The joint venture operates a manufacturing plant at Allansford, which uses patented technology drawn from Royal FrieslandCampina and WCB's whey ingredients in order to produce Vivinal GOS. Vivinal GOS is a prebiotic ingredient containing galacto-oligosaccharides. It is used for its beneficial effects on health as well as for fibre enrichment, and is sold worldwide to infant nutrition companies.

**Warrnambool
Cheese and
Butter Japan**

WCB owns 49% of Warrnambool Cheese and Butter Japan Company Limited, a joint venture with Mori International Corporation of Japan. This joint venture undertakes technical, research and product development activities to develop business with existing and new customers in the Japanese market. The joint venture's operations have recently been expanded to include distribution agreements for non-competing products from select non-Australian dairy manufacturers. This initiative has seen the development of business in new categories such as cheese powders from France and protein products from New Zealand.

**The Tatua
Cooperative of
New Zealand**

WCB and Tatua Cooperative of New Zealand have entered into a technology and services agreement, under which Tatua will license WCB to use its intellectual property in relation to the extraction and processing of lactoferrin from milk.

**Mitsubishi
Corporation**

WCB has an exclusive contract with Mitsubishi to supply a specification of milk powder that is functional in a range of high-end products, particularly in the production of canned coffee. The agreement is for an initial term of three years with provisions to extend for further terms. The specialised premium milk powders provided under the agreement will be used in the manufacture of high quality milk-based beverages and other dairy products for the



Japanese market.

Kraft WCB launched its Sungold branded cream cheese into the export market through an exclusive manufacturing agreement with Kraft. WCB also supplies proprietary low fat cheese formulation to Kraft for its Livefree brand.

5 Market definition

Describe the market(s) (product, functional, geographic and time) relevant to the assessment of the acquisition's effect on competition – this includes markets for the supply of goods or services and markets for the acquisition of goods or services (the relevant market(s)).

Overview of the relevant markets

- 172 There are the following markets that are relevant to the assessment of the acquisition's effect on competition:
- (a) A market for the supply and acquisition of raw milk (including bulk raw milk) in Victoria, South Australia and the Riverina region of New South Wales;¹⁵¹
 - (b) A market, or markets, for the supply of processed and semi-processed dairy products that is at least state wide, and is probably national;¹⁵²
 - (c) A market, or markets, for the supply of high margin dairy ingredients such as nutritional products and lactoferrins;¹⁵³
 - (d) A market for the supply of ancillary services to dairy farmers, such as sales of supplies, equipment and technical advice.¹⁵⁴
- 173 Alternatively, if there is not a unified market, or markets, for the supply of processed and semi-processed dairy products that is at least state wide, there are likely to be the following relevant downstream dairy product markets in respect of dairy products that both Murray Goulburn and WCB supply:
- (a) The market for the manufacture and wholesale supply of pasteurised milk in Victoria;
 - (b) The market for the manufacture and wholesale supply of flavoured milk in at least Victoria, and probably nationally;
 - (c) The national market for the manufacture and wholesale supply of powdered milk products;
 - (d) The market for the manufacture and supply of bulk cream in Victoria and South Australia;
 - (e) The national market for the manufacture and wholesale supply of packaged cream;

¹⁵¹ Report of Christopher Jon Pleatsikas (**Pleatsikas**), 129

¹⁵² Pleatsikas, 130-131

¹⁵³ Pleatsikas, 132

¹⁵⁴ Pleatsikas, 132



- (f) The national market for the manufacture and wholesale supply of packaged and bulk cheese;
- (g) The national market for the manufacture and wholesale supply of for the supply of packaged and bulk butter; and
- (h) The national market for the manufacture and wholesale supply of whey products.

174 Importantly, because WCB does not supply in Australia UHT milk products, dairy desserts or yoghurts, any separate product markets in which these goods are supplied are not relevant to the proposed acquisition.

175 Ultimately, for the reasons set out in sections below, it will not matter whether or not the relevant downstream markets are a unified market, or markets, for the supply of processed and semi-processed dairy products, or separate markets for the supply of specific dairy products. However, the purposive character of market definition must be borne in mind, and as Allsop J (as his Honour then was) said in *Australian Competition and Consumer Commission v Liquorland (Australia) Pty Ltd* [2006] ATPR 42-123 at [429]:

‘Market definition is not an exact physical exercise to identify a physical feature of the world; nor is it the enquiry after the nature of some form of essential existence. Rather, it is the recognition and use of an economic tool or instrumental concept related to market power, constraints on power and the competitive process which is best adapted to analyse the asserted anti-competitive conduct.’

The market for the supply and acquisition of raw milk

176 Raw milk is produced by cows on dairy farms through-out dairy producing regions of Australia. Relevantly, dairy farming is conducted in the Gippsland, northern irrigation zone (which stretches from Shepparton to the Murray) and western regions of Victoria, the south east region of South Australia and the Riverina region of New South Wales.¹⁵⁵

177 Dairy processors including Murray Goulburn and WCB, and milk brokers such as ACM, acquire raw milk directly from dairy farmers. Murray Goulburn and WCB overlap in acquiring raw milk only in the northern irrigation zone (which stretches from Shepparton to the Murray) and western regions of Victoria, and the south east region of South Australia.¹⁵⁶

178 Dairy processors also regularly acquire raw milk from other dairy processors and brokers who conduct broking activities (i.e. sell raw milk). UDP and ACM both predominantly operate as dairy brokers, although both have in recent times acquired manufacturing capabilities (UDP in 2012 and ACM in 2008).¹⁵⁷

Product market

179 The relevant product in this market is raw milk produced on dairy farms, and supplied either by dairy farmers, dairy processors or milk brokers.¹⁵⁸

180 Although in some circumstances a user of bulk raw milk may consider powdered milk to be a substitute for bulk raw milk¹⁵⁹, it is probably not a close substitute for raw milk. Further, products such as soy milk are not close substitutes.¹⁶⁰

¹⁵⁵ Phillips, 26.

¹⁵⁶ Poole, RAP30.

¹⁵⁷ Poole, 124, 126.

¹⁵⁸ Poole, Section 5.2.

¹⁵⁹ Pleatsikas, 116; ACCC SOI at 43.



181 Raw milk produced on dairy farms will vary by milk solids and quality. Milk quality is assessed and valued based on the percentage of protein and fat/solids that it contains, and on the level of bacteria or other contaminants.¹⁶¹ However, dairy processors who acquire raw milk tend to offer price structures that take into account the relevant milk solid content and quality of the milk being purchased.¹⁶² That is, a 'quality adjusted' price is paid for lower quality milk, because competition occurs on both price and non-price dimensions.¹⁶³ Accordingly, all qualities of raw milk are close substitutes for each other.

182 There are also no separate product markets for the acquisition of raw milk from dairy farmers, and the supply of bulk raw milk by dairy processors and milk brokers. These are merely two sides of a single product market. Every transaction involving raw milk involves a party supplying raw milk and a party acquiring raw milk.¹⁶⁴

Geographic market

183 The relevant geographic market for the supply and acquisition of raw milk is Victoria, South Australia and the Riverina region of New South Wales.¹⁶⁵ That is because any purchaser of raw milk in any dairy locality throughout this region would be unable to profitably engage in a small but significant reduction in price as against dairy farmers for at least the following reasons:

- (a) there are several dairy processing plants located in and around Melbourne that are sufficiently close to allow the transport of raw milk from each of the three dairying localities in Victoria and the Riverina region, which links those localities;
- (b) many processing plants within the three dairying localities in Victoria and the Riverina region are also sufficiently close to processing plants in other localities as to allow raw milk to be transported to them;
- (c) significant volumes of raw milk are transported between the various dairying localities throughout this region by Murray Goulburn and its competitors;
- (d) significant volumes are swapped across and within the dairying localities in Victoria and the Riverina region;
- (e) all dairy processors in the region offer the same milk price structure throughout the whole region; and
- (f) in response to a small but significant reduction in price, dairy farmers could economically transport their milk to other localities within the region because the incremental cost of doing so would be less than 10 per cent of the raw milk price, and in many cases, less than 5%.
- (g) it is common industry practice to group dairying localities in subregions, and based on the intermediate location of a metropolitan area, namely Melbourne.¹⁶⁶

Functional level

¹⁶⁰ Poole, 128.

¹⁶¹ Poole, 183-184, 208, 210, 211; McDonald, 25.

¹⁶² Poole, 183-184, 208.

¹⁶³ Pleatsikas, Footnote 6.

¹⁶⁴ Pleatsikas, 113

¹⁶⁵ Pleatsikas, 124.

¹⁶⁶ Pleatsikas, 121-124; cf. McDonald, Confidential Annexures MM2 to MM9.



184 The relevant functional level is the production and supply of raw milk by dairy farmers, dairy processors and milk brokers to dairy processors, milk brokers and other industrial customers such as food manufacturers.

Time dimension

185 The time dimension of a market refers to the location market boundaries at different points in time. This dimension may be important in the case of markets whose boundaries have been changing or are expected to change in some substantial manner over a relevant time period.¹⁶⁷ Because there are no material changes occurring, or expected to occur, in producing and supplying raw milk, the time dimension is not relevant to the analysis of the relevant market in this case.

The market, or markets, for the supply of processed and semi-processed dairy products

Product market

186 There are many processed and semi-processed dairy products that can be made from raw milk.¹⁶⁸ These include:

- (a) Milk and cultured products, for example:
 - (1) Daily pasteurised milk, which can be supplied in bulk (as a liquid ingredient)¹⁶⁹ or in packaged format for consumer consumption¹⁷⁰, and with varying fat contents ranging from wholemilk or full cream, to semi-skim or fat-reduced, to skim milk;¹⁷¹
 - (2) Flavoured milk, which is usually supplied in packaged format;¹⁷² and
 - (3) UHT milk, which has extended shelf life due to higher temperature pasteurisation;¹⁷³
- (b) Cheese and whey products, for example:
 - (1) Bulk and packaged cheeses, including cheddar, processed and specialty cheeses;¹⁷⁴ and
 - (2) Whey powders;¹⁷⁵
- (c) Butterfat products, such as butter, cream and anhydrous milk fat;¹⁷⁶ and
- (d) Powders, including full milk powder, skim milk powder and milk protein powder.¹⁷⁷

187 These products can be supplied in bulk format as dairy ingredients to industrial customers (such as other dairy processors and food manufacturers),¹⁷⁸ or in packaged

¹⁶⁷ Pleatsikas, 56

¹⁶⁸ Mentiplay, 12.

¹⁶⁹ Beniston, 59.

¹⁷⁰ Scott, 92.

¹⁷¹ Scott, 92.

¹⁷² Scott, 111.

¹⁷³ Scott, 55.

¹⁷⁴ Scott, 38; Beniston, 25, 28 and 31.

¹⁷⁵ Beniston, 25, 28, 31.

¹⁷⁶ Mentiplay, 12.

¹⁷⁷ Mentiplay, 12.



format to customers including grocery retailers, food service wholesalers and route outlets (such as convenience stores and small grocery stores) or to contract pack customers.¹⁷⁹

188 Some categories of customers would consider certain categories of processed and semi-processed dairy products to be substitutes. For example:

- (a) Ice cream producers consider milk powders, especially full cream milk powder, to be a substitute for bulk cream when making ice cream products;¹⁸⁰
- (b) Some consumers may consider UHT milk to be a substitute for daily pasteurised milk (although many consumers prefer to use daily pasteurised milk for daily consumption on cereals, in tea and coffee, or in cooking);¹⁸¹ and
- (c) Some industrial customers may consider milk powders to be a substitute for bulk processed milk.¹⁸²

189 More importantly, there is substantial supply-side substitutability between all processed and semi-processed milk products.¹⁸³ In response to a small but significant increase in price in any particular processed or semi-processed dairy product (apart from perhaps very high margin products such as nutritional products or lactoferrins¹⁸⁴), existing dairy producers, or at least a relevant proportion of their volume, would likely be able to shift sufficient production in a relatively short period of time to the product whose price was increased so that the price increase would be unprofitable.¹⁸⁵

190 The following factors establish the existence of strong supply-side substitutability:

- (a) There is significant process commonality in producing the various processed and semi-processed dairy products, including collecting raw milk from farmers, testing raw milk for harmful organisms and pasteurising the raw milk through heat treatment to remove pathogens;¹⁸⁶
- (b) There is significant interdependency between the production volumes of the various processed and semi-processed dairy products, because most products are either a by-product of another dairy product, or produce a range of dairy products as by-products.¹⁸⁷ For example:
 - (1) Cream is produced by centrifugally separating pasteurised milk into cream and skim milk, which means producing cream also increases the production of skim milk and products derived from skim milk and vice versa;
 - (2) Cream can be further processed by churning it into butter, which means that producing butter reduces the supply of cream;

¹⁷⁸ Beniston, 44; Scott, 12 and 32.

¹⁷⁹ Scott, 12.

¹⁸⁰ Beniston, 56.

¹⁸¹ Scott, 56.

¹⁸² Pleatsikas, 118.

¹⁸³ Pleatsikas, 38 to 39, 117 to 118.

¹⁸⁴ Pleatsikas, 119.

¹⁸⁵ Pleatsikas, 118.

¹⁸⁶ Mentiplay, 12 to 16.

¹⁸⁷ Beniston, 24.



- (3) Pasteurised milk may be standardised, evaporated and spray dried into full cream milk powder;
 - (4) Pasteurised milk may be standardised, given starter and coagulant addition, and by having the curds separated from the whey, turned into cheese.¹⁸⁸
- (c) Most Australian suppliers are able to adjust their production across their dairy ingredient portfolios and grocery dairy products in response to demand trends in Australia and overseas, and in response to dairy commodity price movements;¹⁸⁹
- (d) Dairy processors are able to 'wind up' and 'wind down' various parts of their processing plants, depending on the flow of raw milk and the dairy products they wish to produce. This 'flexing' of production mix, or winding up or winding down plants takes approximately 2 to 3 months to organise.¹⁹⁰
- (e) There are a number of dairy processors in Australia, and especially in south eastern Australia, that have multiple dairy processing plants capable of producing many of the various process and semi-processed dairy products, and all of most of them across their portfolio of plants. Further, most dairy processors in south eastern Australia have significant excess capacity, particularly in cheese, powders, butterfat products, and yoghurts and dairy desserts.¹⁹¹

191 Accordingly, there is a unified product market for the supply of processed and semi-processed dairy products (except for perhaps very high margin products such as nutritional products or lactoferrins, as discussed below).

Geographic market

192 There are a number of factors that establish at least state-wide geographic substitutability in the supply of processed and semi-processed dairy products¹⁹²:

- (a) Raw milk only needs to be processed within 50 hours¹⁹³, and is able to be economically transported between all of the dairying regions in Victoria, South Australia and the Riverina region of New South Wales;¹⁹⁴
- (b) Processed and semi processed dairy products are regularly transported between these regions;¹⁹⁵ and
- (c) Daily pasteurised milk is usually supplied and transported in a state-wide basis.¹⁹⁶

193 Further, the extent of geographic substitutability is likely to be broader than state-wide, and is probably national¹⁹⁷, because:

¹⁸⁸ Benniston, 24, MB1.

¹⁸⁹ Scott, 197; Beniston, 48.

¹⁹⁰ Mentiplay, 45 to 47.

¹⁹¹ Mentiplay, 60 to 81.

¹⁹² Pleatsikas, 125.

¹⁹³ McDonald, 48.

¹⁹⁴ McDonald, 32 to 34, 48 to 52.

¹⁹⁵ McDonald, 32 to 34, 48 to 52.

¹⁹⁶ Scott, 94.

¹⁹⁷ Pleastikas, 125.



- (a) Dairy processors have processing facilities with excess capacity in different states, and would be able to scale up or scale down production across their processing plant portfolio, which means there is supply-side substitutability;¹⁹⁸ and
- (b) Most processed and semi-processed dairy products are able to be, and are regularly, transported over long distances, including cheese products, UHT milk products, butters and spreads, flavoured milk (especially UHT flavoured milk) and milk powder.¹⁹⁹

Functional level

- 194 The relevant functional level is the production and wholesale supply of processed and semi processed dairy products to grocery retailers, food service wholesalers, route outlets, contract pack customers and industrial customers.

Time dimension

- 195 The time dimension of a market refers to the location market boundaries at different points in time. This dimension may be important in the case of markets whose boundaries have been changing or are expected to change in some substantial manner over a relevant time period.²⁰⁰ Because there are no material changes occurring, or expected to occur, in producing and supplying processed or semi processed dairy products, the time dimension is not relevant to the analysis of the relevant market in this case.

Alternative separate downstream markets

- 196 If there is not a unified market, or markets, for the supply of processed and semi-processed dairy products, there are likely to be the following relevant downstream dairy product markets in respect of dairy products that both Murray Goulburn and WCB supply.²⁰¹
- (a) The market for the manufacture and wholesale supply of pasteurised milk in Victoria to grocery retailers, food service wholesalers, route outlets and industrial customers;²⁰²
 - (b) The market for the manufacture and wholesale supply of flavoured milk in at least Victoria, and probably nationally to grocery retailers, food service wholesalers, route outlets;²⁰³
 - (c) The national market for the manufacture and wholesale supply of powdered milk products to grocery retailers, food service wholesalers, route outlets and industrial customers;²⁰⁴
 - (d) The market for the manufacturer and supply of bulk cream in Victoria and South Australia to industrial customers;²⁰⁵
 - (e) The national market for the manufacture and wholesale supply of packaged cream to grocery retailers, food service wholesalers and route outlets;²⁰⁶

¹⁹⁸ Mentiplay, 60 to 81; Pleatsikas, 117 and 125.

¹⁹⁹ Scott, 37, 57, 77, 111 and 144.

²⁰⁰ Pleatsikas, 56.

²⁰¹ Pleatsikas, 109, 131; cf. the ACCC's 2010 Statement of Issues regarding Murray Goulburn's previous attempted acquisition of WCB.

²⁰² Scott, 92 to 110; Beniston, 59 to 62.

²⁰³ Scott, 111 to 124.

²⁰⁴ Scott, 143 to 151; Beniston, 42 to 50.

²⁰⁵ Beniston, 51 to 58.



- (f) The national market for the manufacture and wholesale supply of packaged and bulk cheese to grocery retailers, food service wholesalers, route outlets and industrial customers;²⁰⁷
- (g) The national market for the manufacture and wholesale supply of packaged and bulk butter to grocery retailers, food service wholesalers, route outlets and industrial customers;²⁰⁸ and
- (h) The national market for the manufacture and wholesale supply of whey products to industrial customers.²⁰⁹

A market, or markets, for the supply of high margin dairy ingredients such as nutritional products and lactoferrins

- 197 There are high margin dairy ingredients, such as nutritional products and lactoferrins²¹⁰ that may constitute a separate market to other processed and semi-processed dairy products.²¹¹
- 198 That follows because there would be limited demand-side substitutability for these products, and limited supply side substitutability for these products from existing dairy producers who currently do not produce nutritional or lactoferrin products. Specifically, in order to produce such products, a dairy processor requires the following:
- (a) Access to production facilities capable of producing high quality base ingredients, being high quality skim milk powder and whey powder, and access to high quality vegetable oils and specialty micronutrients such as galactooligosaccharide or lactoferrin;
 - (b) Ownership of or licences to intellectual property and know-how regarding particular processes production methods;
 - (c) Strong customer relationships, with commitments from at least one large global customer to underwrite the necessary investment requirements;
 - (d) Control over the raw milk supply chain relevant to producing the product;
 - (e) Quality control systems in processing plants.²¹²
- 199 The geographic scope of these markets are likely to be global (a part of which is in Australia).²¹³

A market for the supply of ancillary services to dairy farmers, such as sales of supplies, equipment and technical advice

There are various ancillary services and products that Murray Goulburn supplies to farmers, including supplies, equipment, technical advice and financial services, that may be supplied in a separate market or markets for the supply of such ancillary services to farmers.²¹⁴ This market or these markets are likely to be regional or state wide, given the

²⁰⁶ Scott, 152 to 166.

²⁰⁷ Scott, 36 to 54; Beniston, 41 to 49.

²⁰⁸ Scott, 74 to 91; Beniston, 41 to 49.

²⁰⁹ Beniston, 42 to 50

²¹⁰ Beniston, 32 to 40.

²¹¹ Pleatsikas, 132

²¹² Beniston, 117

²¹³ Pleatsikas, 132; Beniston, 110 to 117

²¹⁴ Pleatsikas, 132; Poole, 87-90.



existence of physical Murray Goulburn stores throughout the dairying regions in south eastern Australia.

6 Suppliers

6.1 Describe the inputs into the production of goods or services by each of the merger parties in the relevant market(s) and indicate the value of those inputs as a proportion of total production. Where alternative inputs are available, provide a list of substitutes.

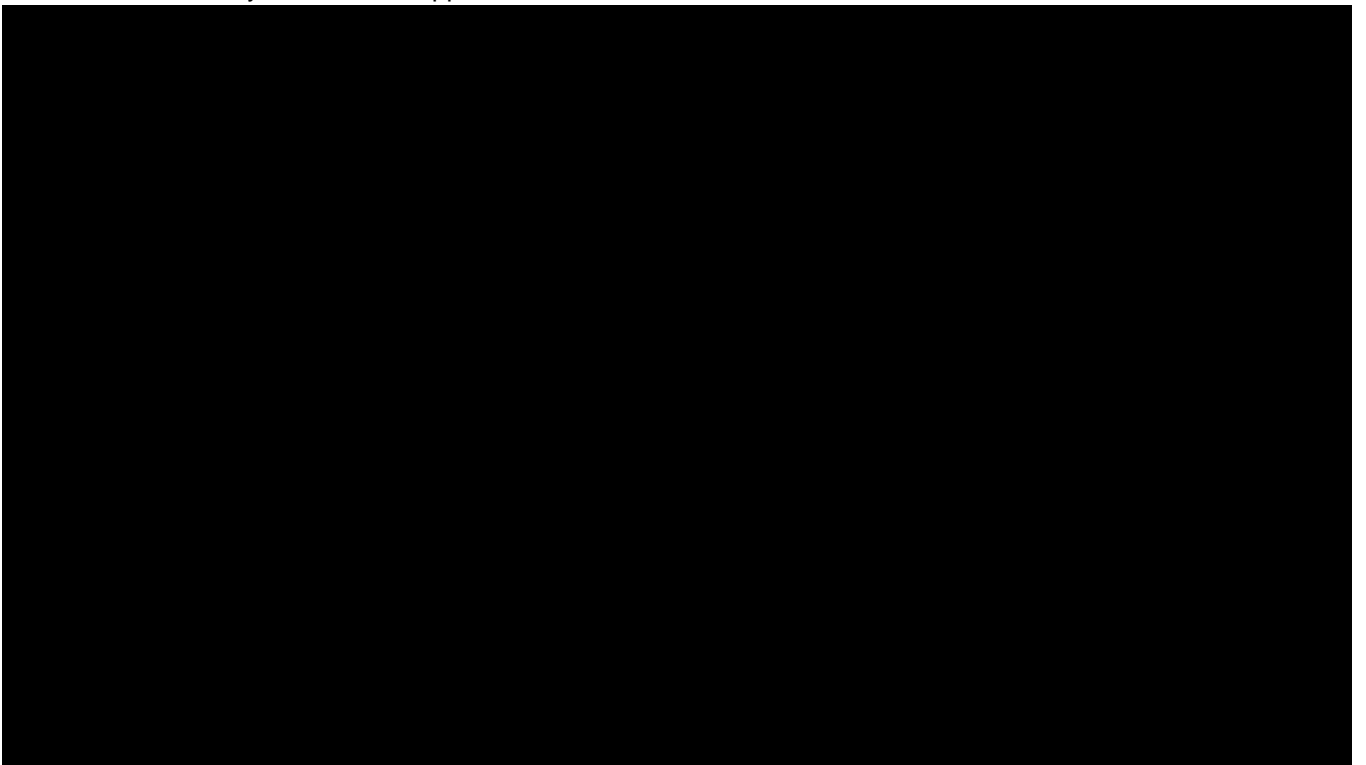
200 Raw milk is a critical input to the products manufactured by the merger parties (including processed and semi-processed dairy products, and dairy ingredients). There is no appropriate substitute for raw milk.

201 As mentioned in section 5 above, raw milk is produced by cows on dairy farms throughout dairy producing regions of Australia.

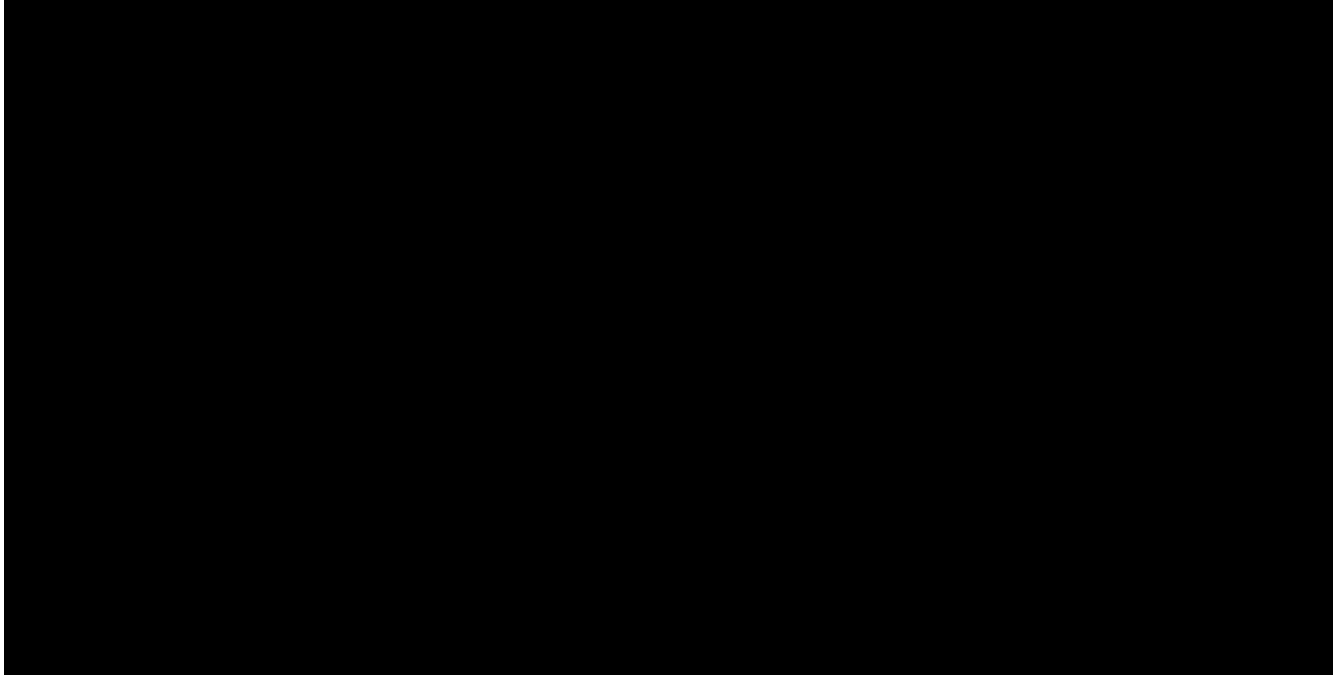
202 Raw milk is valued according to the amount of milk solids (ie butterfat and protein) that it contains. Typically, one kilogram of milk solids equals 0.6 kilograms of butterfat plus 0.4 kilograms of protein. The price that Murray Goulburn offers for milk protein is 2.2 times the price for butterfat.

6.2 Provide the names and contact details of a representative selection of suppliers of inputs to each of the merger parties in the relevant market(s).

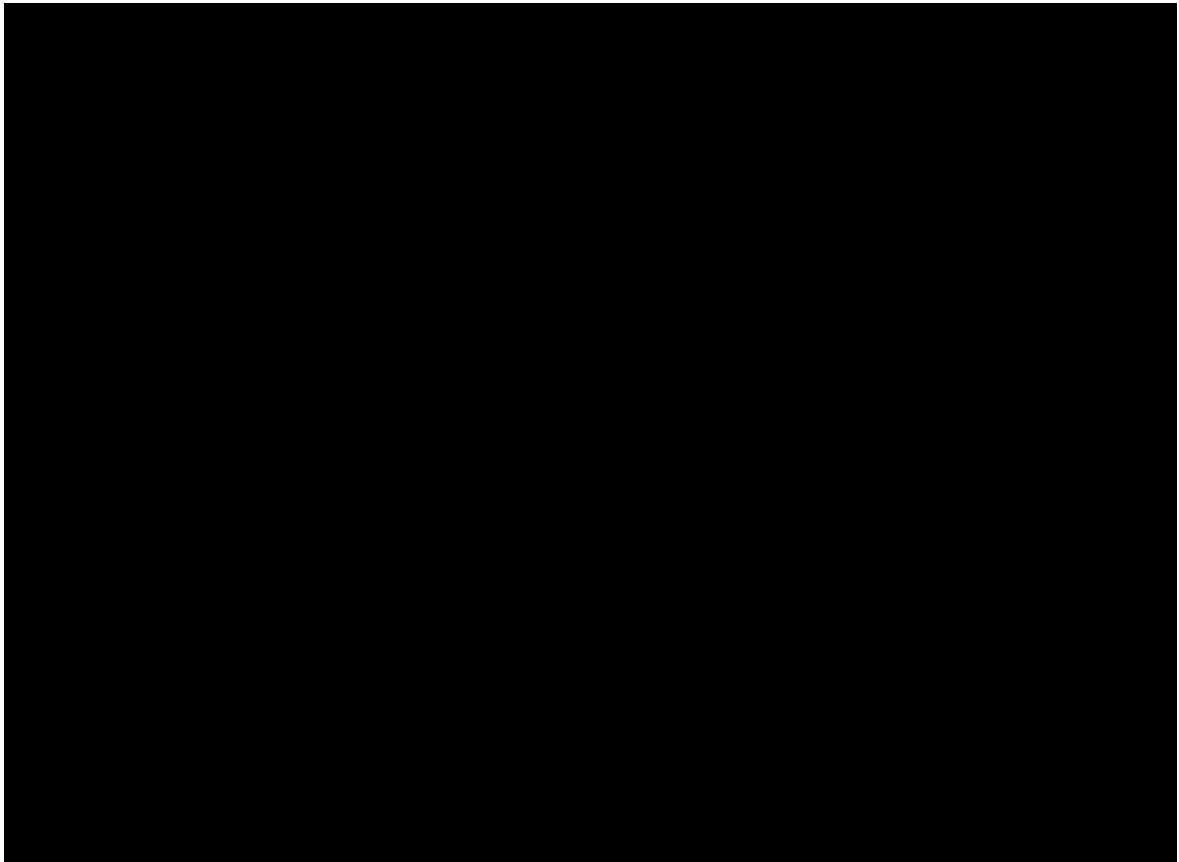
203 The following table contains the names and contact details of a representative selection of Murray Goulburn's suppliers.²¹⁵



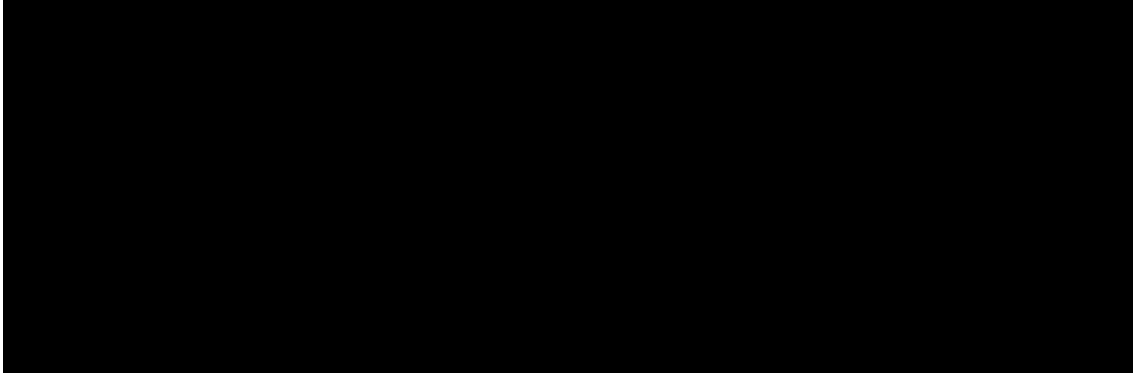
²¹⁵ Poole, Confidential Annexure RAP42.



204 The following table contains the names and contact details of a representative selection of WCB's suppliers.²¹⁶



²¹⁶ Poole, Confidential Annexure RAP42.



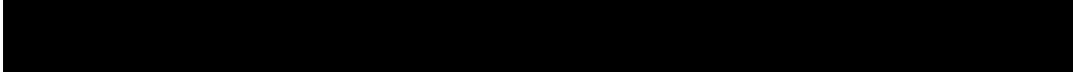
6.3 Describe any purchasing arrangements in place with each of the suppliers identified above and outline whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition.

Murray Goulburn’s payment system and acquisition of raw milk

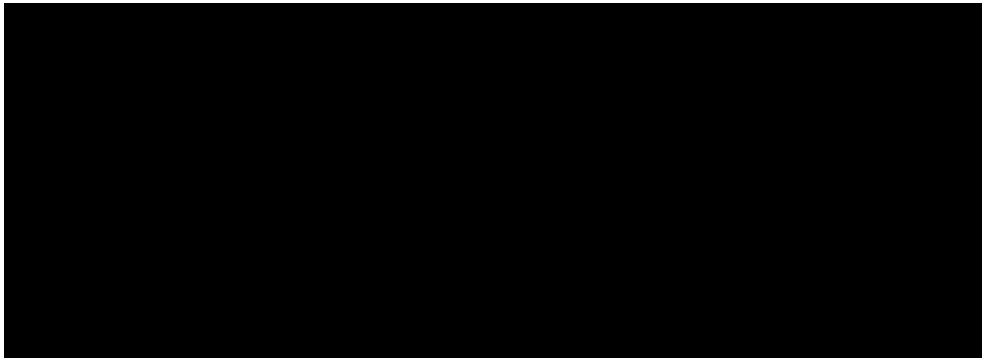
205 Murray Goulburn adopted a new pricing structure in 2013 – the **Milk Payment System**. Pursuant to the Milk Payment System Murray Goulburn offers farmer suppliers in its North, West and Gippsland regions the same milk price structure, regardless of where they are located. Attachment RAP47 contains an explanation of the Milk Payment System. Specifically:

- (a) There is a single base price per kilogram for milk solids that is offered to all farmer suppliers regardless of location or calving pattern and which increases incrementally during the year;
- (b) There are incentives payable for “flat” supply of milk, growth in milk supply, and higher volume farms designed to encourage year-round and efficient milk supply;
- (c) There are discounts deducted for lower quality milk; and
- (d) There are differing milk collection and handling charges that depend upon the size of tanker servicing the farm and number of collections per day.²¹⁷

206



(a)



(b)

²¹⁷ Milk Payment System Explained 2013-2014; Poole, 158-162.

²¹⁸ Poole, 223-224.



- 207 Murray Goulburn's single base price for raw milk varies from month to month to reflect the seasonality of milk production and to encourage milk production during the months when production is usually lower (that is, outside of Spring).²¹⁹
- 208 In central and northern New South Wales, Murray Goulburn offers farmer suppliers a separate milk payment system that differs from the Milk Payment System that Murray Goulburn offers in its North, West and Gippsland regions.²²⁰ Attachment RAP53 contains an explanation of the New South Wales – Sydney Market Region Milk Payment System.²²¹
- 209 Murray Goulburn offers a different milk payment system in central and northern New South Wales for the following reasons:
- (a) New South Wales milk production is largely used by dairy processors for supplying daily pasteurised drinking milk, and they require a certain, year round, flat supply of milk. As a consequence, dairy processors in central and northern New South Wales pay a higher price for milk than in southern New South Wales and Victoria in order to obtain largely flat milk supply (which is a higher cost production style); and
 - (b) Coles pays Murray Goulburn (under Murray Goulburn's contract to supply Coles with private label pasteurised drinking milk in New South Wales) a price that comprises three elements: [REDACTED]

However, raw milk prices in New South Wales would not be greater than raw milk prices in southern New South Wales and Victoria after adjusting for transport costs from Victoria.

- 210 As Murray Goulburn has just completed a thorough review of its pricing system, it is not contemplating changing this pricing structure in any significant manner should Murray Goulburn's acquisition of WCB proceed. If the acquisition does proceed, former WCB suppliers will have access to the same pricing system as Murray Goulburn suppliers.

Murray Goulburn's raw milk price setting

- 211 As described earlier in response to question 6.1, Murray Goulburn sets the price it pays its suppliers by reference to its budget forecast. Murray Goulburn's management adopts the following steps to estimate the price it can pay its suppliers over the year.
- (a) Management develops a forecast budget of Murray Goulburn's revenues and costs (apart from raw milk) for the relevant financial year;
 - (b) Management deducts a "budgeted profit" of approximately [REDACTED], to be distributed to its shareholders as dividends;
 - (c) The remainder is the estimated amount available for the base price milk payments to farmer suppliers;
 - (d) Management sensitivity test s the remainder by reference to expectations of foreign exchange rates and global dairy commodity prices; and
 - (e) Using the sesnsitivity tested forecasted surplus, management determines the recommended opening base milk price available to suppliers. The opening base

²¹⁹ Poole, 161.

²²⁰ Poole, 216

²²¹ Milk Payment System 2013-14 NSW – Sydney Market Final; Poole, 222.

²²² Poole, 216, 219.



price is approximately 90% to 96% of the estimated available amount for distribution to the farmer suppliers over the course of the year.²²³

- 212 At the start of each financial year, Murray Goulburn notifies its farmer suppliers of its “opening” base milk price and its forecast of the base milk price that farmer suppliers can expect to receive over the course of the coming financial year.²²⁴
- 213 As noted earlier, the “opening” base milk price is usually 90% to 96% of the forecast base milk price for the coming year, and Murray Goulburn periodically announces a “step up” to the base milk price throughout the year.²²⁵ Murray Goulburn’s Board is responsible for approving all “opening” base milk prices and price “step-ups”.
- 214 In determining whether to make a step-up or the size of that step up, Murray Goulburn takes into account the following factors:
- (a) delivered sales as the year progresses;
 - (b) updated expectations about the foreign exchange;
 - (c) updated expectations about the commodities market; and
 - (d) anything else that affects its initial budget forecast (for example, revised milk intake volumes, revised operating costs, etc).²²⁶
- 215 There is no pre-determined timing of Murray Goulburn’s “step-ups”. In considering when to step-up Murray Goulburn takes into account a number of factors, including:
- (a) completed sales volumes and prices;
 - (b) changes to outlook in the commodities and currency market; and
 - (c) farmer cash-flow needs.²²⁷
- 216 Step ups” apply retrospectively for farmer suppliers who are continuing to supply Murray Goulburn at the time of the step up.²²⁸
- 217 Although Murray Goulburn principally sets its milk price based on the amount it considers it can return to farmer suppliers, after allowing for a [REDACTED] [REDACTED] it also has regard to competitor milk pricing from time to time.
- 218 If Murray Goulburn observes that competitors are pricing above its current base milk price, or have “stepped up” their milk price before Murray Goulburn, Murray Goulburn’s management may recommend to the Board that it bring forward any planned “step-up”, subject to its budget allowing for it.²²⁹
- 219 If Murray Goulburn acquires WCB, it does not intend to make any significant changes to its milk payment system.²³⁰

²²³ Poole, 163.

²²⁴ Poole, 191, 194.

²²⁵ Poole, 187.

²²⁶ Poole, 192.

²²⁷ Poole, 196.

²²⁸ Poole, 187.

²²⁹ Poole, 233.

²³⁰ Poole, 242.



7 Competitors

7.1 Provide details of alternative suppliers of products now, or shortly to be, competitive with, or otherwise substitutable for, goods or services produced by each of the merger parties in the relevant market(s).

Upstream competitors for the acquisition and supply of raw milk

220 Murray Goulburn's competitors for the acquisition and supply of raw milk in Victoria, the Riverina region of New South Wales and South Australia are:

- (a) Fonterra Australia, which acquires approximately 1.7 billion litres of raw milk per year from approximately 1,300 dairy farmers;²³¹
- (b) WCB, which acquired approximately 890 million litres of raw milk in FY2013 from approximately 570 dairy farmers;²³²
- (c) Bega, which acquires approximately 641 million litres of raw milk in FY2013;²³³
- (d) UDP, which acquires approximately [REDACTED] of raw milk in FY2013;²³⁴
- (e) Parmalat, which acquires approximately [REDACTED] of raw milk in FY2013;²³⁵
- (f) Lion, which acquires approximately 1 billion litres of raw milk per year from approximately 750 dairy farmers,²³⁶ including from Dairy Farmers Milk Co-operative (DFMC), which acquires approximately [REDACTED] of raw milk from approximately 600 farmer suppliers, and supplies all of that milk to Lion;²³⁷
- (g) Bulla Dairy Foods;
- (h) Burra Foods Australia; and
- (i) Longwarry Food Park.

221 During FY2013, Murray Goulburn and after dairy processors and milk brokers acquired the following volumes of milk from farmer suppliers in each of the following regions:²³⁸

²³¹ Poole, 118.

²³² Poole, 120; WCB Annual Report for FY2013, 79.

²³³ Poole, 123.

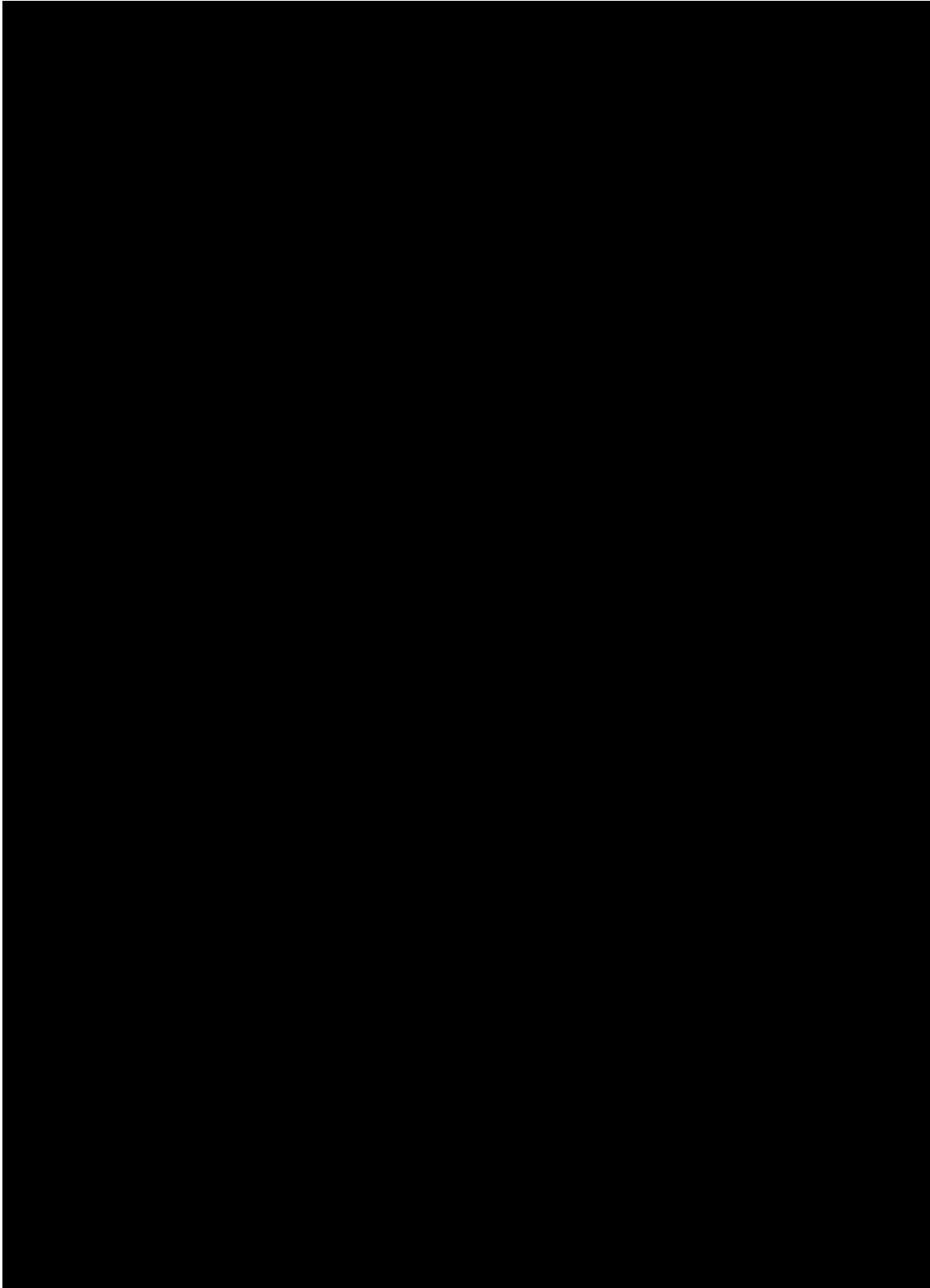
²³⁴ Poole, 124.

²³⁵ Poole, 125.

²³⁶ Poole, 121.

²³⁷ Poole, 121-122.

²³⁸ Poole, RAP16.



²³⁹ Australian Consolidated Milk Pty Ltd.



- 222 Over the last 10 years, raw milk production in Australia has been declining combined with Australian per capita consumption of milk increasing.²⁴⁰ To the best of Murray Goulburn's knowledge, many dairy processors have excess capacity, and together, these circumstances have intensified competition between dairy processors for the acquisition of raw milk.²⁴¹
- 223 Spreadsheets recording farmer suppliers gained and lost by Murray Goulburn in the North, West and Gippsland regions for FY2011, FY2012 and FY2013 area are contained in the file "2011 Supplier Movements", "2012 Supplier Movements" and "2013 Supplier Movements" attached at Confidential Exhibit RAP16.
- 224 Murray Goulburn's competitors in the North, West and Gippsland regions offer milk price structures to dairy farmers that are similar to, but not identical to, Murray Goulburn's milk payment system. To the extent there are differences, this will be in prices between regions, typically due to variations in farm productivity and milk quality, rather than different payment systems.²⁴² Some competitors' milk price structures differ according to the kinds of end products that they have chosen to supply. For example:
- (a) Parmalat and Lion focus on obtaining year round flat milk supply, and their pricing structures are tailored to suit obtaining dairy farmers of that kind of end product;
 - (b) WCB and Burra Foods focus on obtaining milk to support their export businesses, and their pricing structures are tailored accordingly; and
 - (c) Murray Goulburn aims to collect milk for both of the purposes set out in (a) and (b) above, and Murray Goulburn structures its milk price in order to attract all kinds of dairy farmers.²⁴³
- 225 Murray Goulburn's competitors in the North, West and Gippsland regions largely offer the same milk price structure throughout the region, and only occasionally offer different regional milk prices in order to pursue temporary strategies.²⁴⁴

Downstream competitors for the wholesale supply of processed and semi-processed dairy products

- 226 There are numerous competitors in the supply of processed and semi-processed dairy products to grocery retailers, food service wholesalers, route outlets and industrial containers in Australia, including:²⁴⁵
- (a) Fonterra;
 - (b) Lion;
 - (c) Parmalat;
 - (d) Kraft
 - (e) Freedom Foods
 - (f) WCB;
 - (g) Norco;

²⁴⁰ Poole, RAP17.

²⁴¹ Poole, 132-133.

²⁴² Poole, 226.

²⁴³ Poole, 235.

²⁴⁴ Poole, 226, 228.

²⁴⁵ Scott, 22, 40, 66, 102, 148 and 177.



- (h) Bodalla;
- (i) Sanitarium;
- (j) George Weston;
- (k) Goodman Fielder;
- (l) Lurpack;
- (m) Wesgold;
- (n) Freedom Foods (A2);
- (o) Harvey Fresh;
- (p) Brownes;
- (q) Bulla;
- (r) Nestle;
- (s) Bead Foods;
- (t) Unilever;
- (u) Bega Cheese;
- (v) Burra Foods;
- (w) Lugwarry Park
- (x) United Dairy Power; and
- (y) Richmond Dairy.

227 The sections below describe the various competitors by product category.

(i) Finished Cheese

228 The table below lists the wholesale suppliers of finished cheese, and the current shares of national supply volumes of cheese supplied to grocery retailers:²⁴⁶

Product	Supply volumes (MAT to 20/10/2013)
Private label	
Fonterra	
Kraft	
Lion	
Murray Goulburn	

²⁴⁶ Scott, 42.



WCB	
Norco	
Bodalla	
Other	

(ii) UHT milk

- 229 Murray Goulburn faces competition nationally in supplying UHT milk from a number of suppliers, including from imports from New Zealand.²⁴⁷
- 230 Murray Goulburn faces competition in supplying UHT milk from Freedom Foods, Parmalat, Harvey Fresh, Burra Foods, Lion and Sanitarium (which supplies soy UHT milk).²⁴⁸
- 231 WCB does not supply UHT milk.²⁴⁹
- 232 The table below sets out the national supply volumes of UHT milk to grocery retailers by supplier (MAT to 27/10/2013).²⁵⁰

Product	Supply volumes (MAT to 20/10/2013)
Private label	
Murray Goulburn	
Lion	
Parmalat	
Fonterra	
Sanitarium	

²⁴⁷ Scott, 61.

²⁴⁸ Scott, 61.

²⁴⁹ Scott, 63.

²⁵⁰ Scott, 64.



Other



(iii) Butter / spreads

233 Murray Goulburn is not aware of WCB supplying retail butter or spreads in Australia.²⁵¹

234 MAT 27/10/13 private label butter and spreads supplied to grocery retailers were as follows:²⁵²

Product	Supply volumes (MAT to 20/10/2013)
Private label	
Murray Goulburn	
Fonterra	
George Weston	
Goodman Fielder	
Lurpack	
Wesgold	
Other	

There is a high degree of promotional activity in the sale of butter and spreads, especially by Fonterra – Murray Goulburn’s main competitor.²⁵³

(iv) Daily pasteurised milk²⁵⁴

The table below lists the suppliers of finished daily pasteurised milk on a national basis, and the current shares of national supply volumes to grocery retailers:

²⁵¹ Scott, 84.

²⁵² Scott, 85.

²⁵³ Scott, 88.

²⁵⁴ Scott, 105.



Product	Supply volumes (MAT to 20/10/2013)
Lion	
Parmalat	
Freedom Foods (A2)	
Fonterra	
Harvey Fresh	
Brownes	
Private Label	
Other	

(v) Flavoured milk

- 235 National suppliers of flavoured milk to route stores are Lion and Parmalat, and these suppliers have well recognised flavoured milk brands.²⁵⁵
- 236 WCB only supplies small volumes of flavoured milk.²⁵⁶
- 237 The current shares of national supply volumes of branded and private label flavoured milk supplied in grocery retailers is as follows.²⁵⁷

Product	Supply volumes (MAT to 20/10/2013)
Private label	
Murray Goulburn	

²⁵⁵ Scott, 117.

²⁵⁶ Scott, 119.

²⁵⁷ Scott, 120.



Lion	
Nestle	
Parmalat	
Sanitarium	
Other	

(vi) Dairy desserts and yoghurt

238 Murray Goulburn is not aware of WCB supply dairying desserts or yoghurt in Australia.²⁵⁸
The current shares of national volumes for branded and private label yoghurt supplied to grocery retailers is as follows:

Product	Sales % Share 2010/2011
National Foods	
Fonterra	
Parmalat	
Bulla	
Browns	

The current shares of national volumes of dairy desserts supplied to grocery retailers is as follows:

Product	Sales % Share 2010/2011
National Foods (now National Foods)	

²⁵⁸ Scott, 130 and 138.



Fonterra	
Parmalat	
Brownes	

(vii) Milk powder²⁵⁹

The current shares of national volumes for branded and private label milk powder supplied to grocery retailers is as follows:

Product	Supply volumes (MAT to 20/10/2013)
Private Label	
Murray Goulburn	
Fonterra	
Nestle	
Other	

(viii) Cream²⁶⁰

The current shares of national volumes for branded and private label cream supplied to grocery retailers is as follows:

Product	Supply volumes (MAT to 20/10/2013)
Bulla	
Parmalat	

²⁵⁹ Scott, 149

²⁶⁰ Scott, 162.



Product	Supply volumes (MAT to 20/10/2013)
Murray Goulburn	
Bead Foods	
Brownes	
Kraft	
Lion	
Private Label	
Other	

Competitors in supply private label dairy products in Australia for grocery retailers

239 The major grocery retailers award private label contracts to dairy processors on a tender basis for a fixed term, usually for two to three years.²⁶¹

240

241 The table below summarises the current suppliers of private label contracts for the major grocery retailers.²⁶³]

Product Segment	Woolworths	Coles	Metcash	Aldi
UHT				

²⁶¹ Scott, .186

²⁶² Scott, 188.

²⁶³ Scott, 184.



Product Segment	Woolworths	Coles	Metcash	Aldi
Cheese				
Spreads				
Butter				
Daily pasteurised milk				
Milk powder				
Cream				
Dairy desserts				

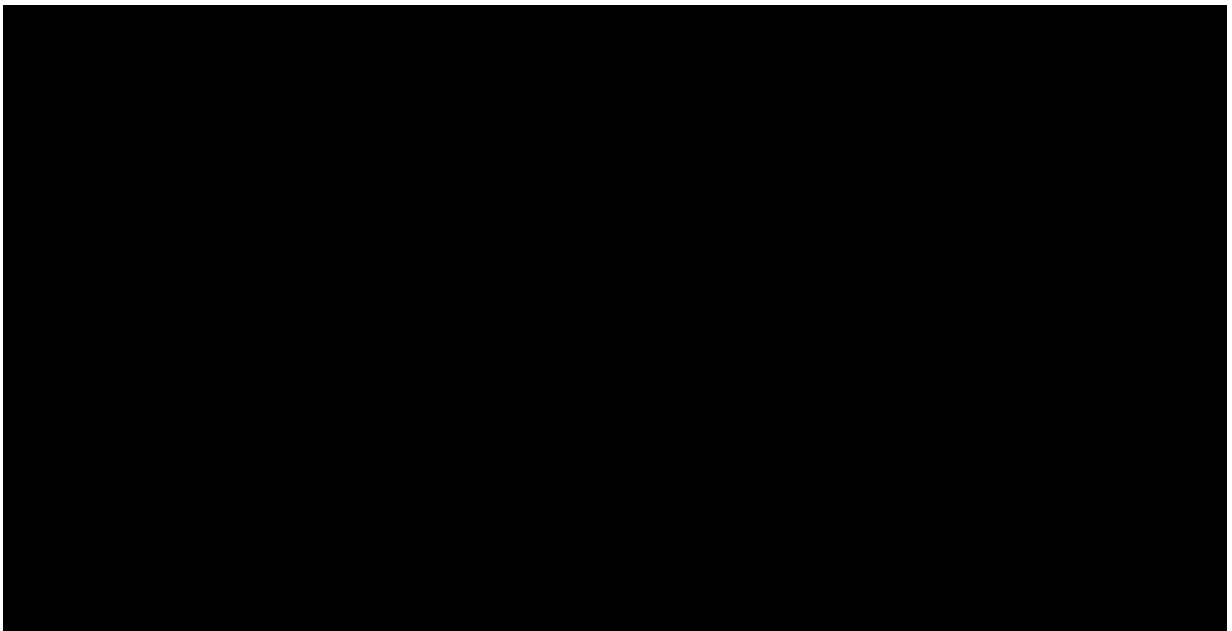
Supply to food service wholesalers

242 Suppliers of dairy products to food service customers, apart from Murray Goulburn, include Fonterra, Parmalat, Lion and Kraft. The food service buying groups regularly buy from multiple suppliers at once.²⁶⁴

²⁶⁴ Scott, 22.



243



(i) Bulk processed milk

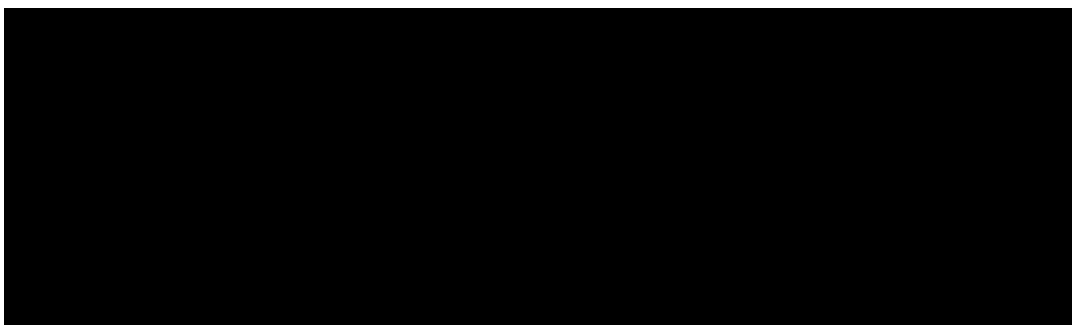
244 Other dairy processors apart from Murray Goulburn that supply bulk processed milk include Fonterra, Bega, Burra Foods, United Dairy Power and Richmond Dairy.²⁶⁶

245 WCB does not currently supply bulk processed milk in Australia.²⁶⁷

(ii) Bulk cream

246 The following table forecasts the market share of bulk cream suppliers by volume in Victoria, South Australia and NSW for FY2014.

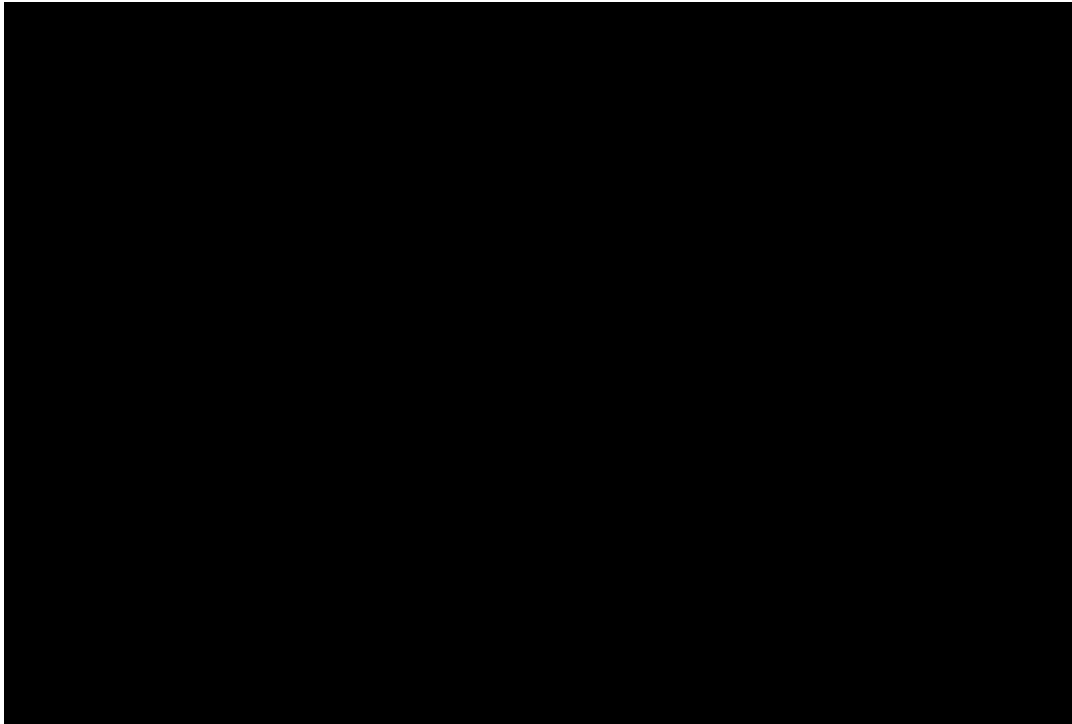
Product	Volume (tonnes)	Volume share (%)
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²⁶⁵ Beniston, 48, MB6.

²⁶⁶ Beniston, 48, MB6.

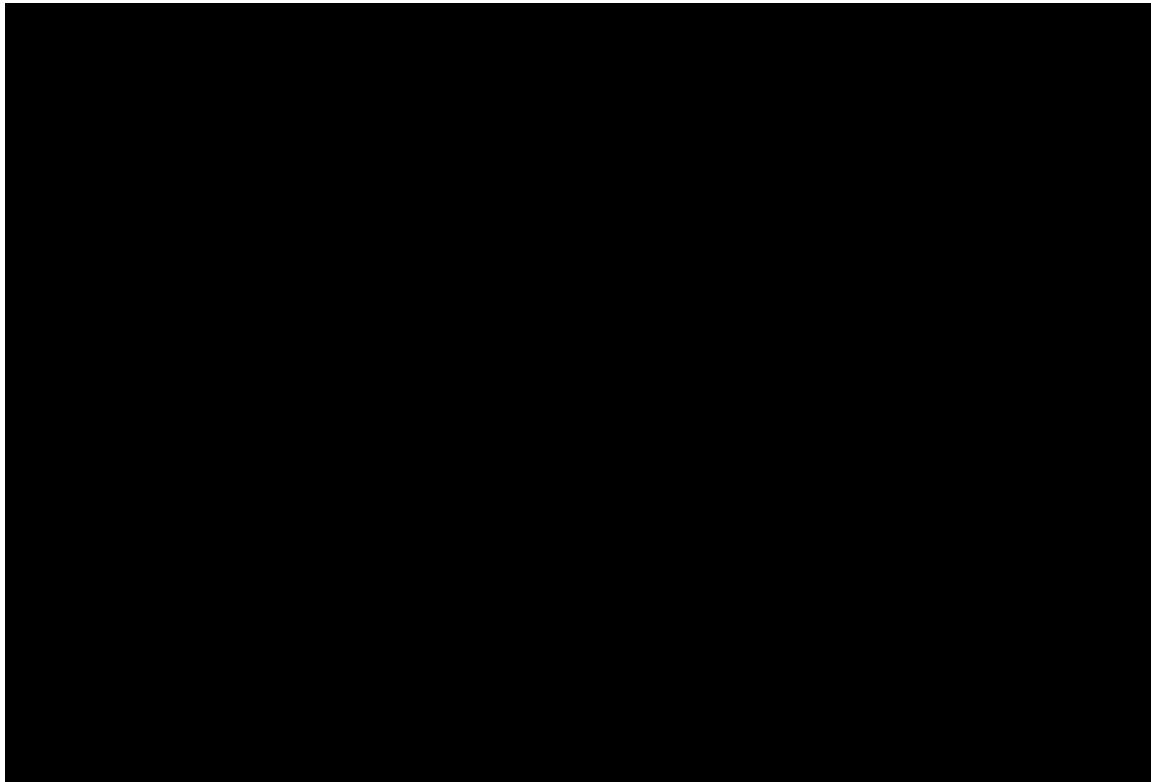
²⁶⁷ Beniston, 48, MB6, 62.



Competitor processing facilities

Fonterra

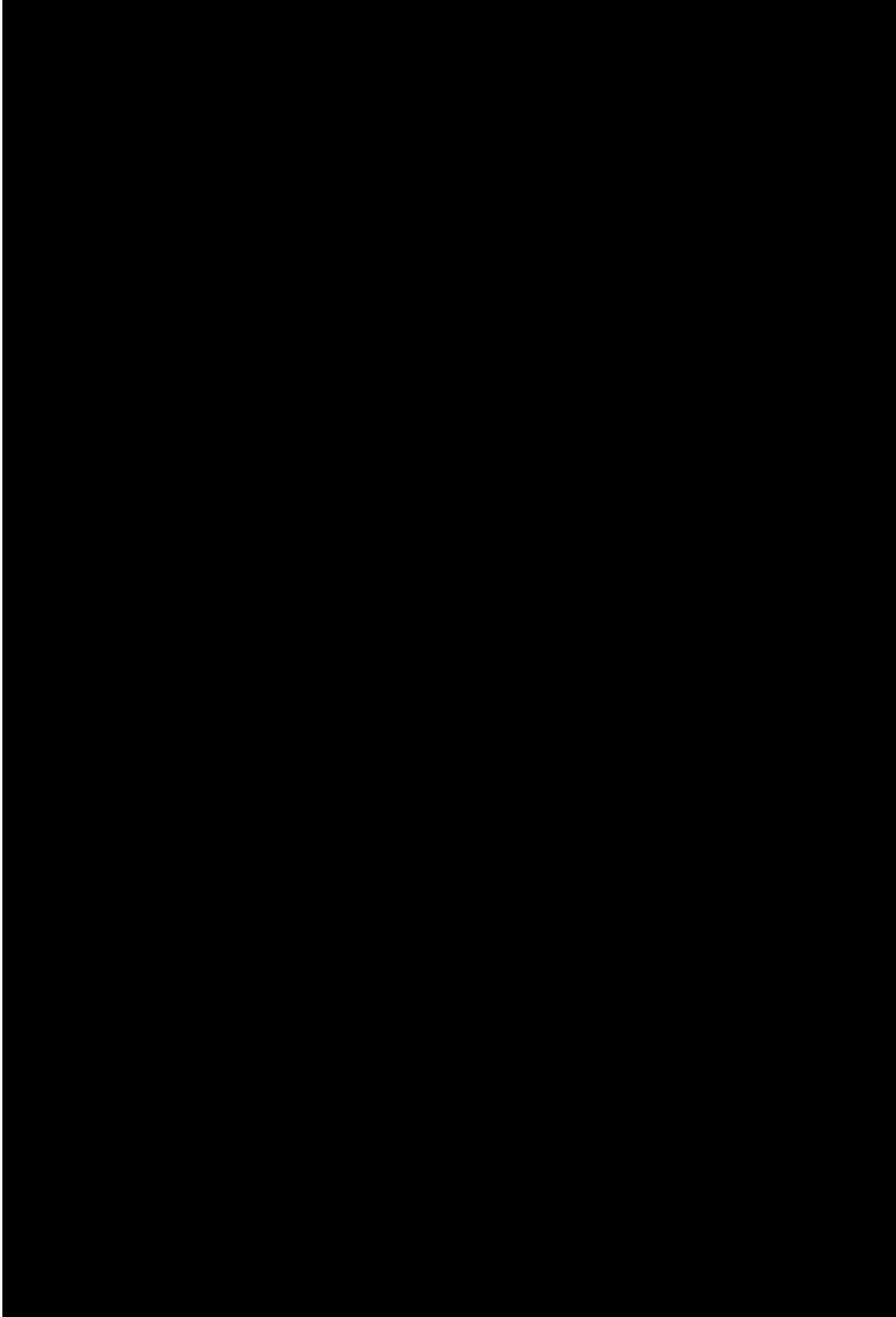
247



²⁶⁸ Mentiplay, 59-60.



248

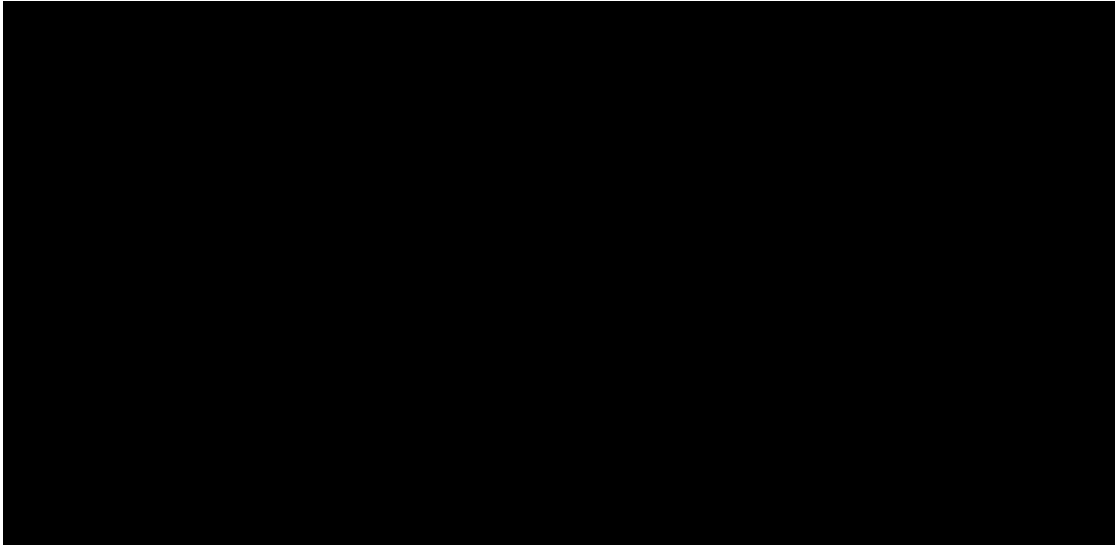


²⁶⁹ Mentiplay, 71 and 75.

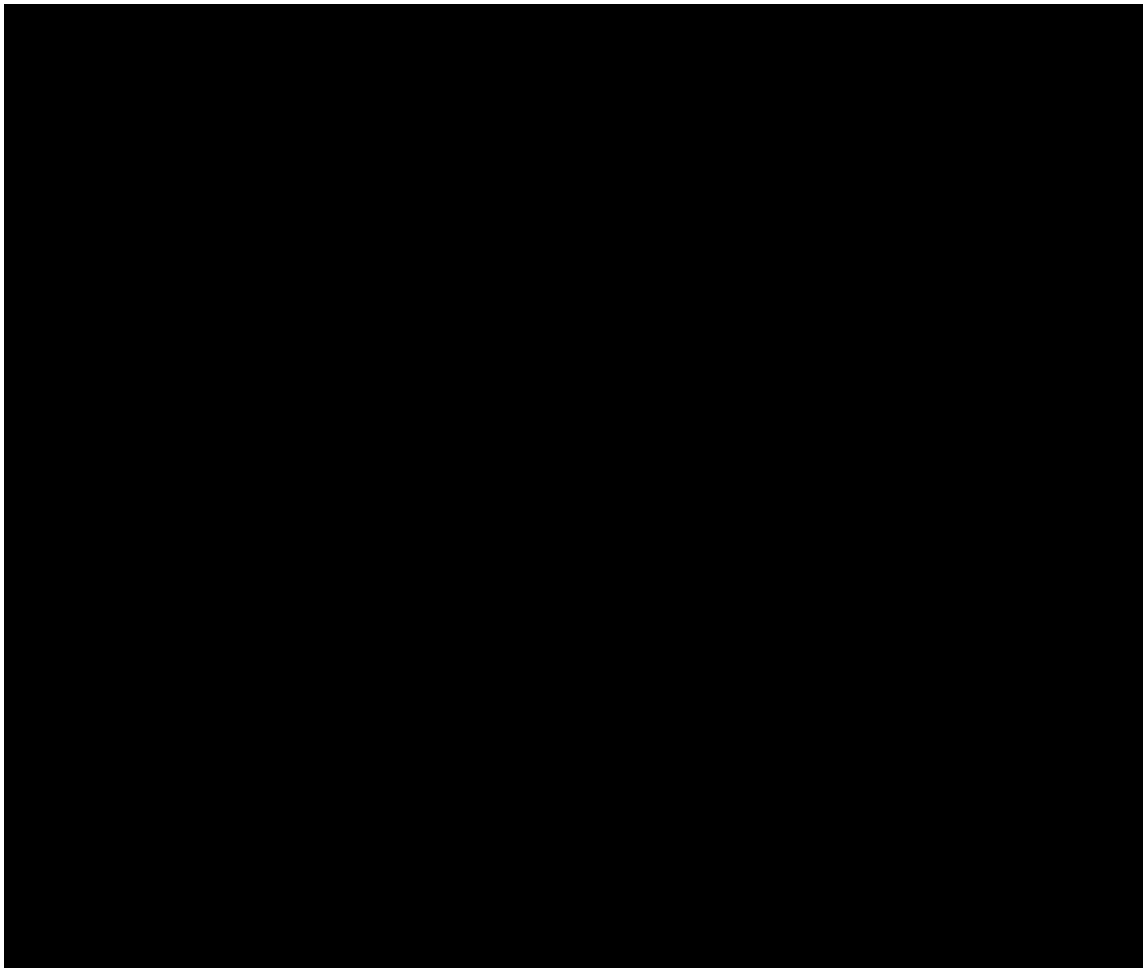


Parmalat

249

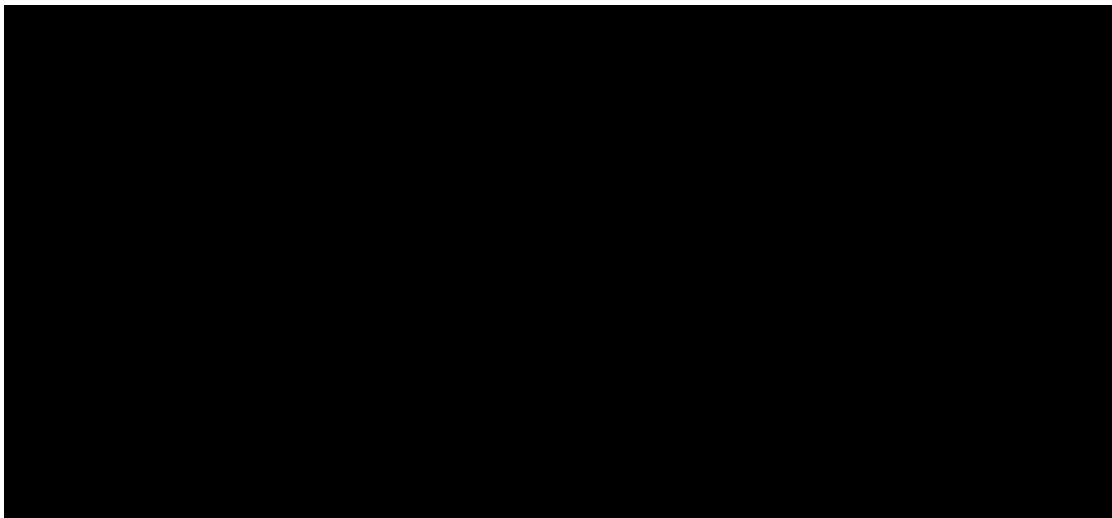


Lion



²⁷⁰ Mentiplay, 78.

²⁷¹ Mentiplay, 64.



Other competitors

- 250 Other competitor dairy processors in south east Australia include:
- (a) United Dairy Power, which owns two processing facilities in South Australia, and produces and supplies various cheeses, butter and whey powders;
 - (b) Burra Foods, based in Korumburra in Victoria, and produces milk powders, nutritional milk powders, bulk cream, milk concentrates and dairy desserts; and
 - (c) Longwarry Food Park, based in Longwarry in Victoria, and produces fresh milk, long life milk, extended shelf life milk, cream cheeses, milk powders and dairy concentrates.²⁷²

7.2 If the suppliers identified above do not produce goods or services which are substantially the same as those goods or services produced by the merger parties in the relevant market(s), explain why it is considered that these goods or services are viable alternatives.

Not applicable.

8 Customers

8.1 Provide the names and contact details of a representative selection of the customers of each of the Applicant and the Target in the relevant market(s).

Murray Goulburn's customers in downstream markets

Grocery retailer customers

251 Murray Goulburn supplies the major retailers Coles, Woolworths, Aldi and Metcash (the major wholesaler to independent supermarkets such as IGA supermarkets. Murray Goulburn also supplies smaller retailers such as Costco, Foodworks, Foodland and SPAR in Queensland.²⁷³

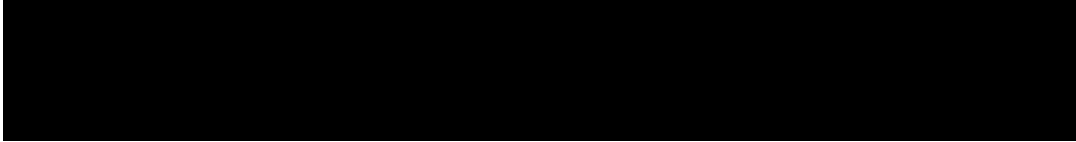
²⁷² Mentiplay, 79 and 81.

²⁷³ Scott



252 Grocery retailers acquire both private label and branded dairy products from Murray Goulburn. Generally, private label products are supplied to grocery retailers through a tender process. Historically, grocery retailers have requested tenders on a yearly basis,²⁷⁴ however, more recently private label contracts have been entered into for longer terms.

253



254 Murray Goulburn's FY2014 forecast sales to grocery retailers are set out in the table below.²⁷⁶

Grocery retailer	Branded FY2014 forecast	Private label FY2014 forecast
Woolworths		
Coles		
Metcash		
Aldi		
Costco		
SPAR		
Other grocery retailers		

The following tables break down Murray Goulburn's FY2014 forecast sales by product.

²⁷⁴ Scott

²⁷⁵ Scott, 17.

²⁷⁶ Scott, 18.



(i) Cheese²⁷⁷

Grocery retailer	Branded 2013/2014 forecast	Private label 2013/2014 forecast
------------------	----------------------------	----------------------------------

Woolworths		
Coles		
Aldi		
Metcash		
SPAR		
Other grocery retailers		

(ii) UHT milk²⁷⁸

Grocery retailer	Branded 2013/2014 forecast	Private label 2013/2014 forecast
------------------	----------------------------	----------------------------------

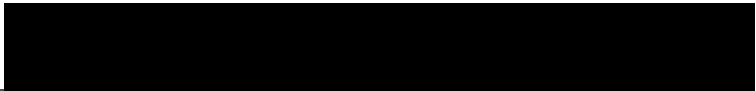
Woolworths		
Coles		
Metcash		
Aldi		
Costco		
SPAR		

²⁷⁷ Scott, 47.

²⁷⁸ Scott, 60.



Other grocery retailers



(iii) Butter/Spreads²⁷⁹

Grocery retailer	Branded 2013/2014 forecast	Private label 2013/2014 forecast
------------------	----------------------------	----------------------------------

Woolworths		
Coles		
Metcash		
Aldi		
SPAR		
Other grocery retailers		

(iv) Spreads²⁸⁰

Grocery retailer	Branded 2013/2014 forecast
------------------	----------------------------

Woolworths	
Coles	
Metcash	

²⁷⁹ Scott, 80.

²⁸⁰ Scott, 81.



Grocery retailer

Branded 2013/2014 forecast

SPAR	
Other grocery retailers	

(v) Flavoured milk

255 The table at (ii) above sets out Murray Goulburn's FY2014 forecast sales of UHT milk –

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(vi) Daily pasteurised milk

Grocery retailer

Private label 2013/2014 forecast

--	--

(vii) Yoghurt²⁸²

Grocery retailer

2013/2014 forecast

Woolworths	
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²⁸¹ Scott, 98

²⁸² Scott, 135.



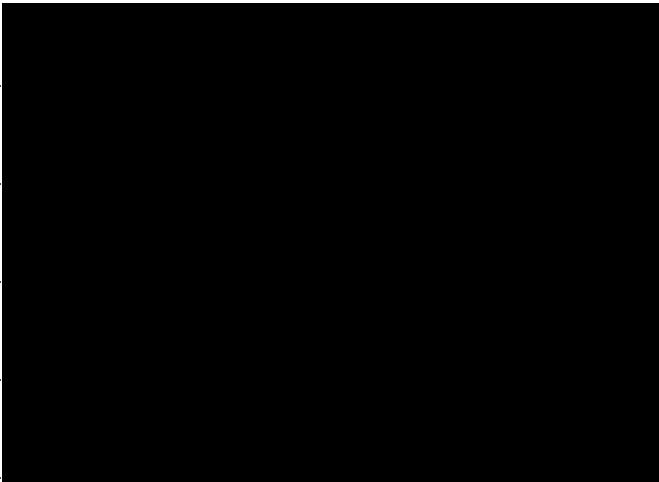
Coles

Metcash

Aldi

SPAR

Other grocery retailers



(viii) Milk powder²⁸³

Grocery retailer

Branded 2013/2014 forecast

**Private label 2013/2014
forecast**

Woolworths

Coles

Metcash

Aldi

Costco

SPAR

Other grocery retailers



²⁸³ Scott, 146.



(ix) Cream (fresh)²⁸⁴

Grocery retailer	Branded 2013/2014 forecast	Private label 2013/2014 forecast
-------------------------	-----------------------------------	---

Woolworths		
Coles		
Metcash		
Aldi		
SPAR		
Other grocery retailers		

(x) Cream (UHT)²⁸⁵

Grocery retailer	Branded 2013/2014 forecast
-------------------------	-----------------------------------

Woolworths	
Coles	
Metcash	
SPAR	
Other grocery retailers	

²⁸⁴ Scott, 159.

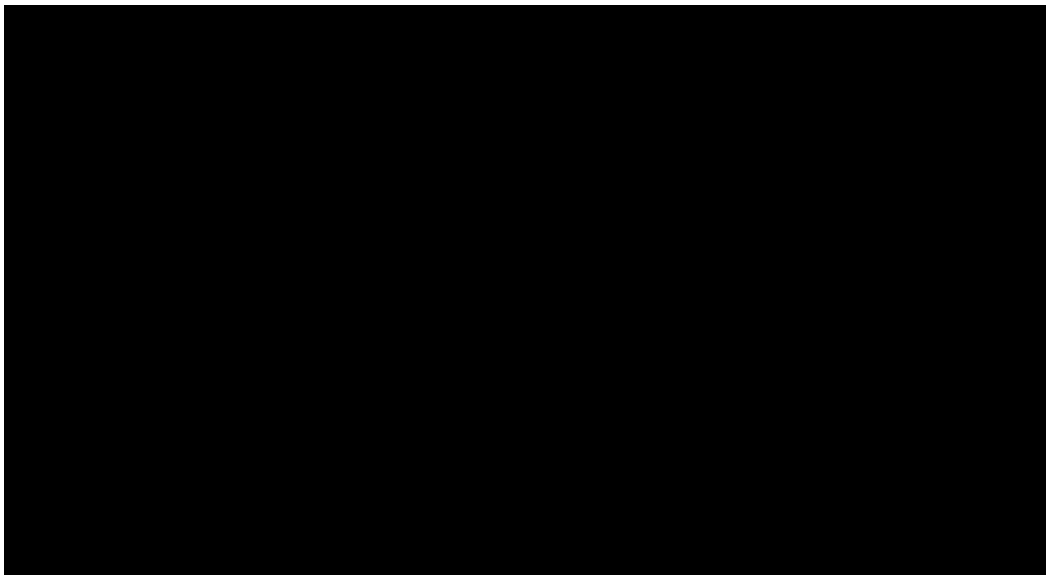
²⁸⁵ Scott, 160.



(xi) Food service²⁸⁶

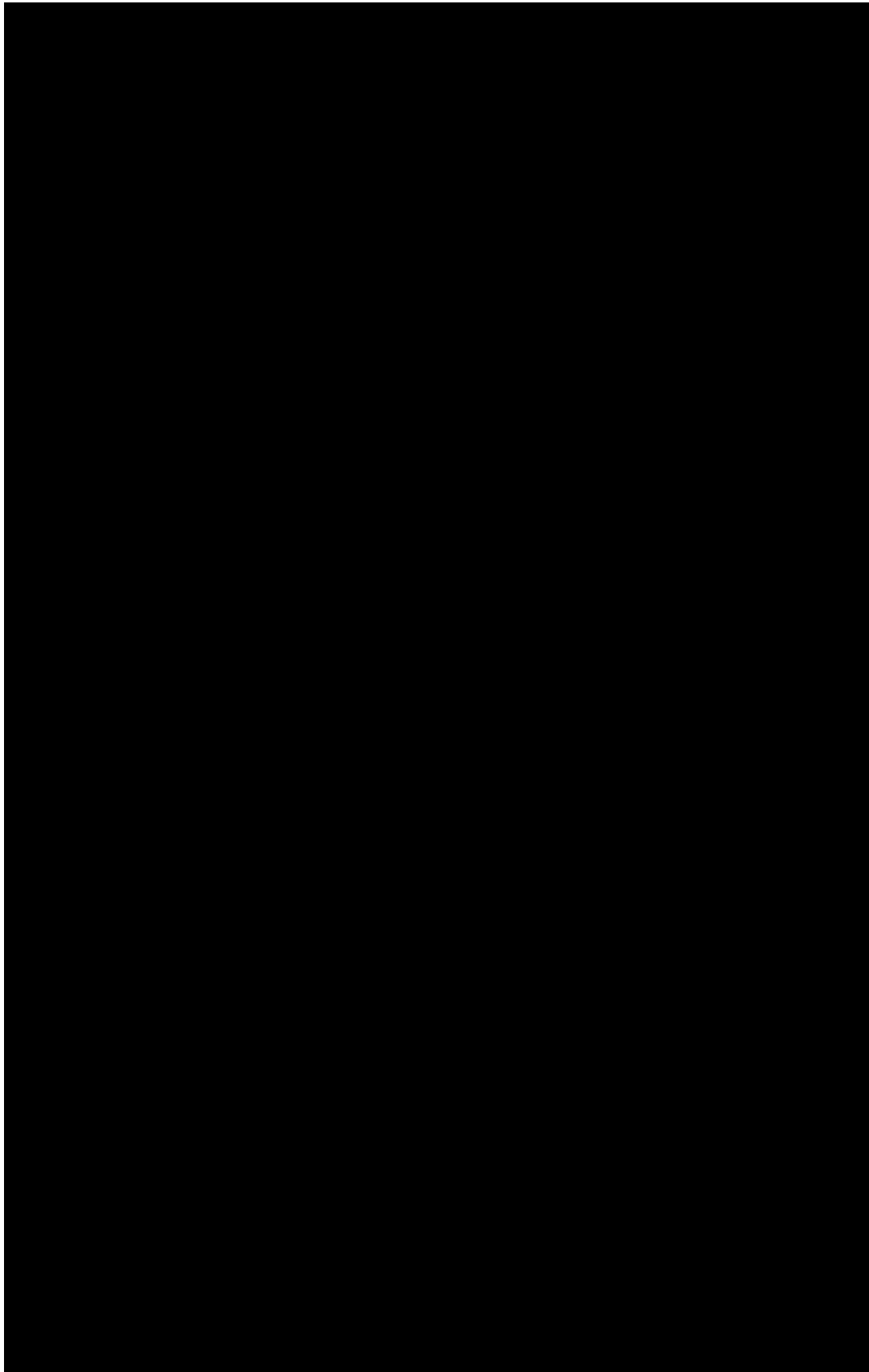
Product	2013/2014 forecast
Butter	
Blends	
Natural Cut Cheese	
Pizza/mozzarella cheese	
Processed cheese	
UHT milk	
Fresh cream	
Milk powder	

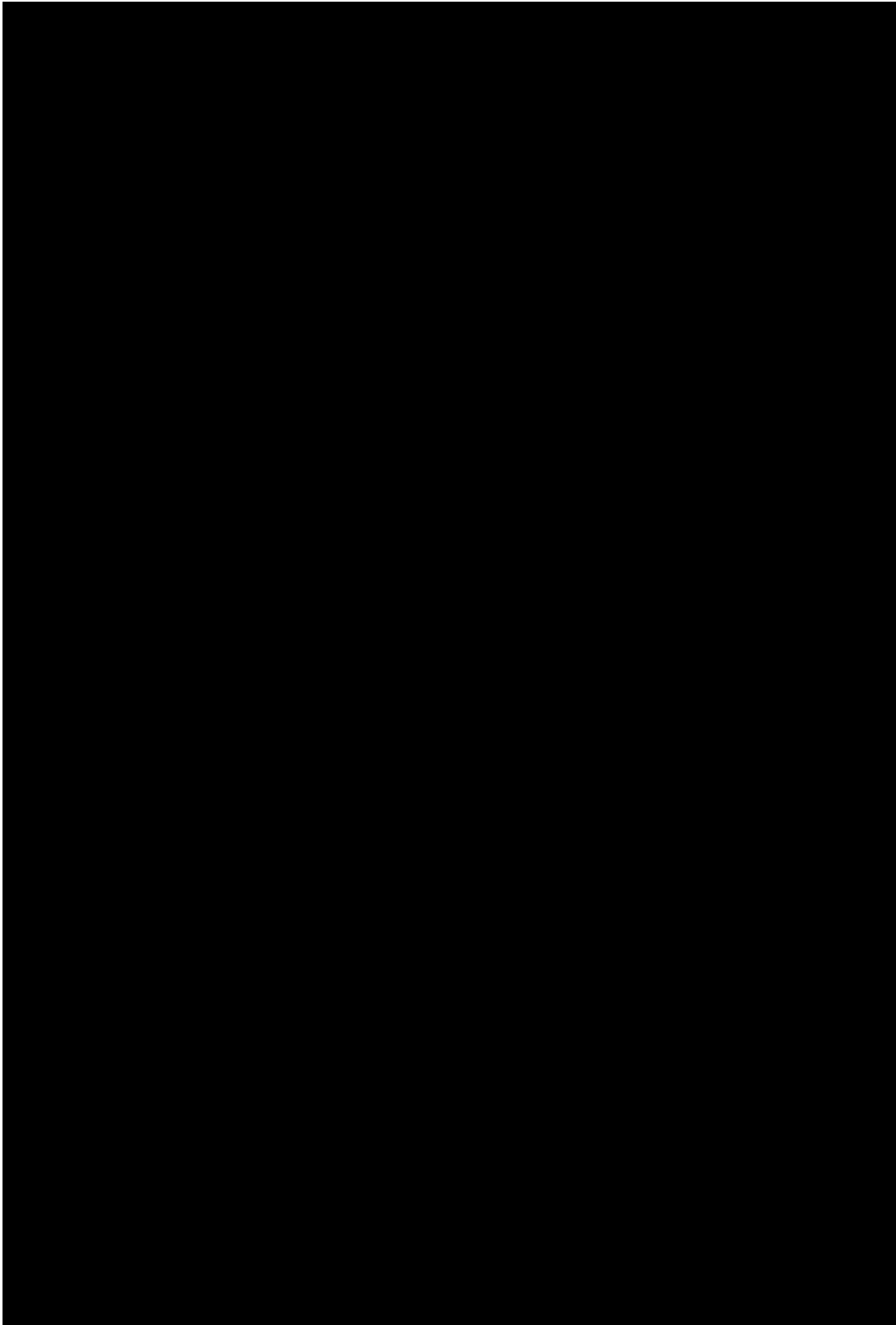
256 The names and contact details of a representative selection of the grocery retailer customers of Murray Goulburn are set out below.²⁸⁷



²⁸⁶ Scott, 174.

²⁸⁷ Scott, PWS3.







Food service customers

257 Murray Goulburn supplies food service distributors via buying groups. Buying groups represent food service distributors which supply the restaurant, hotel and coffee shop trade. The breakdown of products supplied can also be seen in the table below – the main products are cheese products. Large quantities of UHT milk and butter are also supplied, in addition to spreads, fresh creams and powders. Buying groups represent food service distributors which supply the restaurant, hotel and coffee shop trade.²⁸⁸

Product **2013/2014 forecast**

Product	2013/2014 forecast
Butter	
Blends	
Natural Cut Cheese	
Pizza / mozzarella cheese	
Processed cheese	
UHT milk	

²⁸⁸ Scott



Product	2013/2014 forecast
Fresh cream	[REDACTED]
Milk powder	[REDACTED]

258 These main food service buying groups that Murray Goulburn supplies are:

- (a) Bidvest Australia Limited, which has 32 members;
- (b) NAFDA Limited, which has 59 members including 5 Ways Foodservice and Delray Foodservices;
- (c) Countrywide Australia Limited, which has 108 members;
- (d) Combined Foodservices of Australia, which has 58 members, including its anchor member, PFD Food Services; and
- (e) 750 independent distributors including Hudson Pacific / Dairy Country.²⁸⁹

259 Murray Goulburn deals with both these buying groups and customers directly. Buying groups will negotiate promotions on behalf of the customers they represent and customers deal directly with Murray Goulburn in the acquisition of products and products are delivered directly to customers.²⁹⁰

260 Murray Goulburn does not enter into supply agreements for specified time periods with these buying groups. Its dealings are generally transactional and relationship-based. Supply is generally on an 'as needs' basis, and Murray Goulburn has to price competitively to secure supply.²⁹¹

261 [REDACTED]

262 The names and contact details of the top five foodservice customers of Murray Goulburn are set out below.²⁹³

[REDACTED]

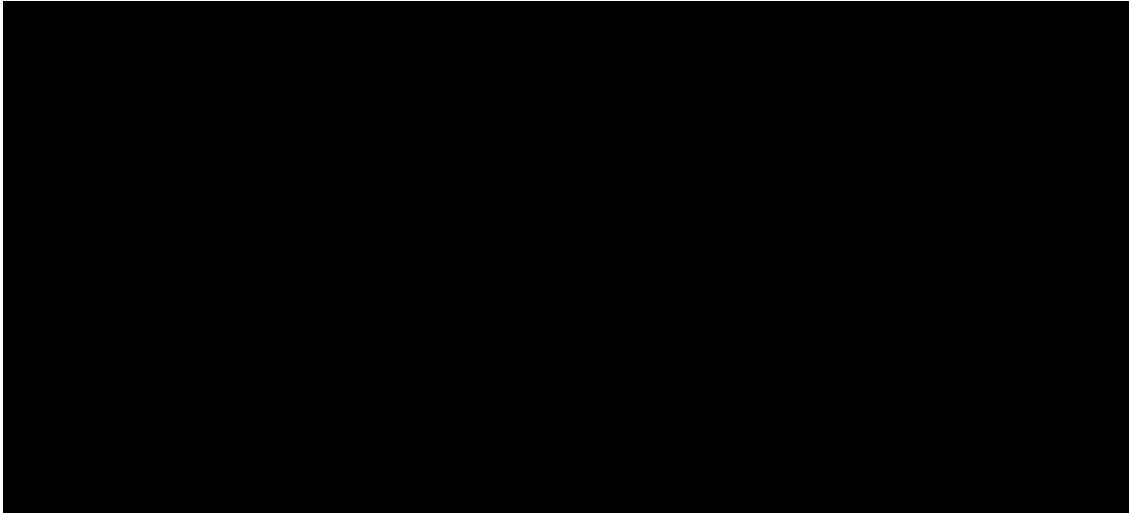
²⁸⁹ Scott, 19.

²⁹⁰ Scott, 20.

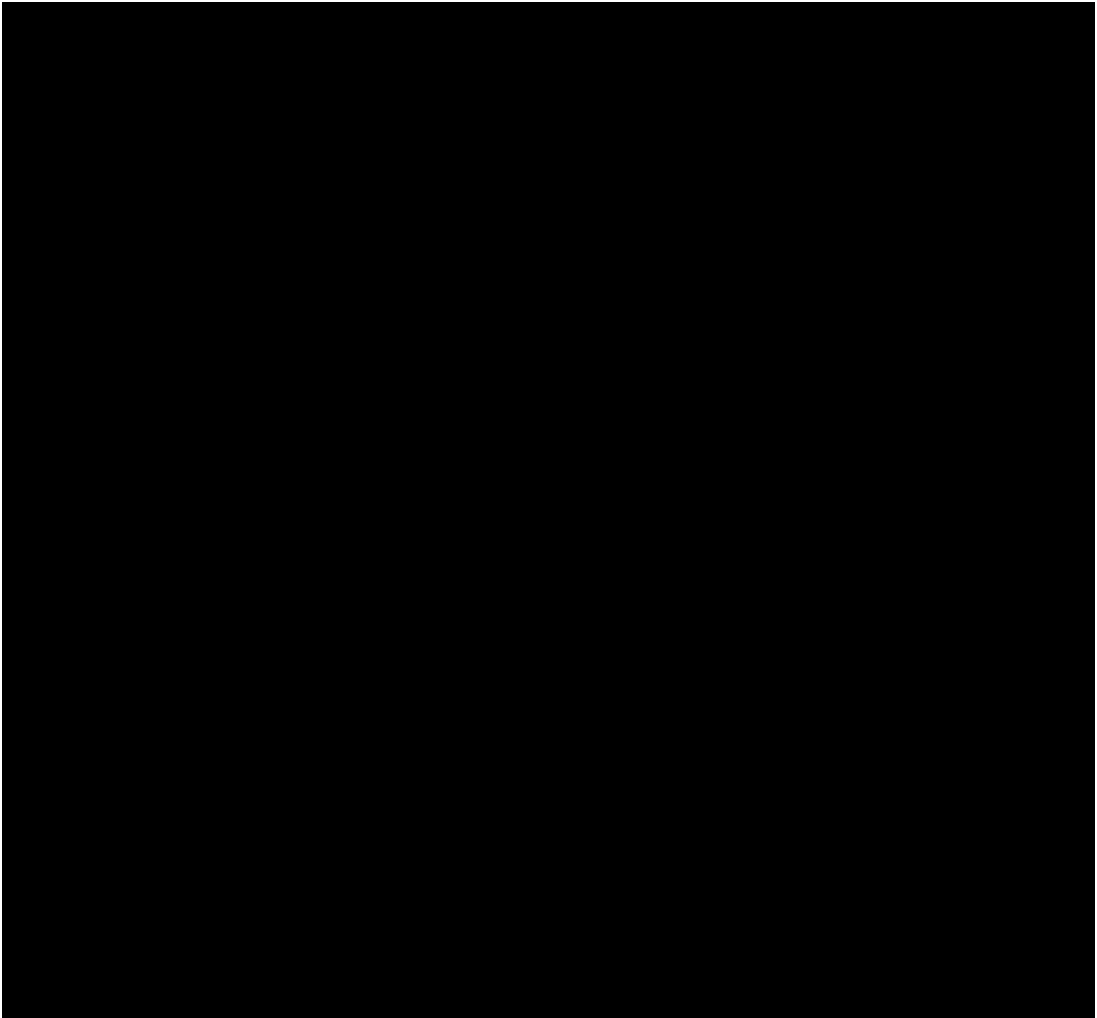
²⁹¹ Scott, 21.

²⁹² Scott, 23.

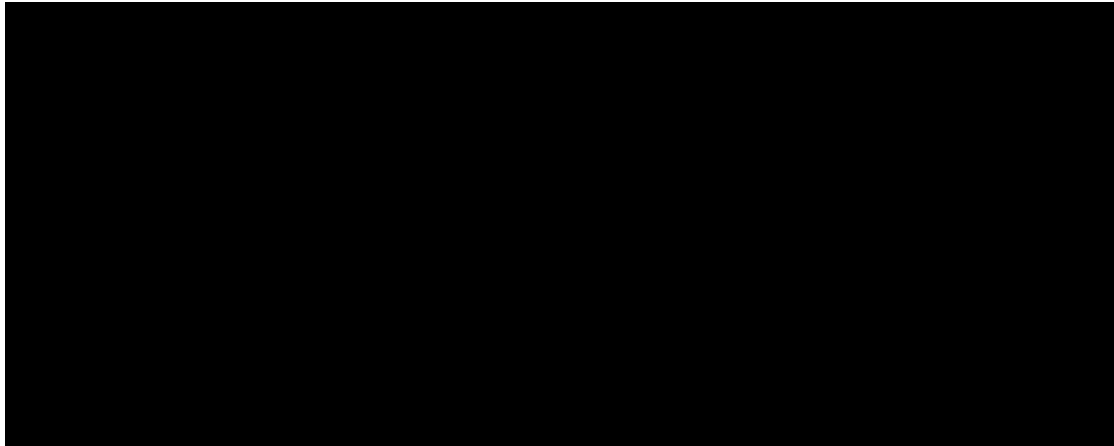
²⁹³ Scott, PWS3.




263 The names and contact details of a representative selection of the buying group customers of Murray Goulburn are set out below.²⁹⁴

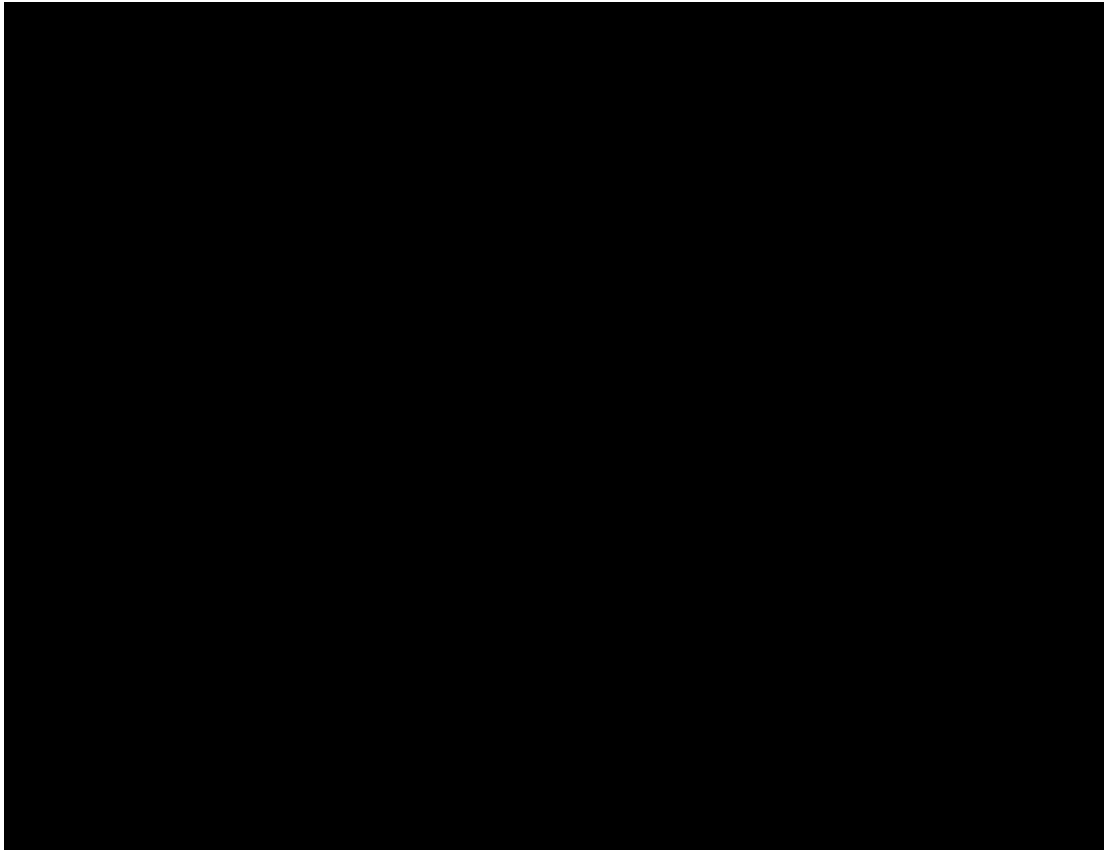


²⁹⁴ Scott, PWS3.



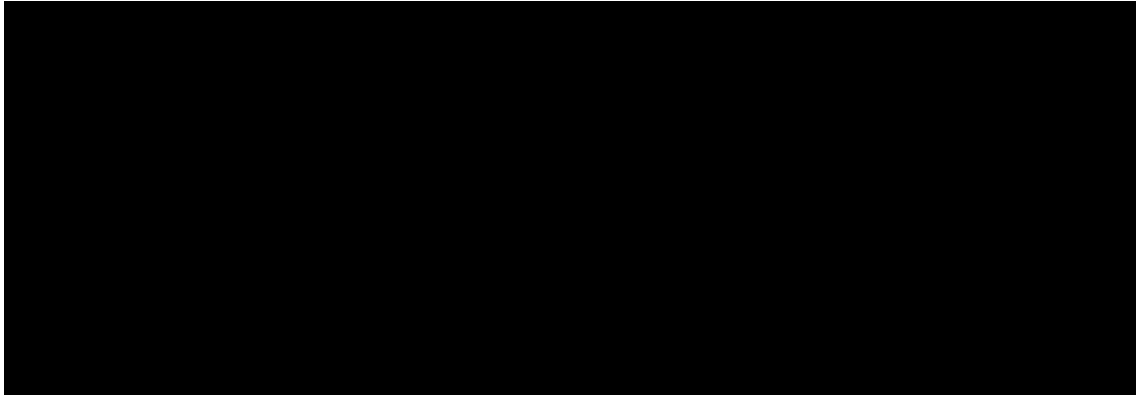
264 Murray Goulburn supplies distributors in the Kiewa Valley that sell to route outlets, shops and small grocery stores. 

265 The names and contact details of a representative selection of route customers of Murray Goulburn, together with product sales data for those customers, are set out below.²⁹⁶



²⁹⁵ Scott, 27.

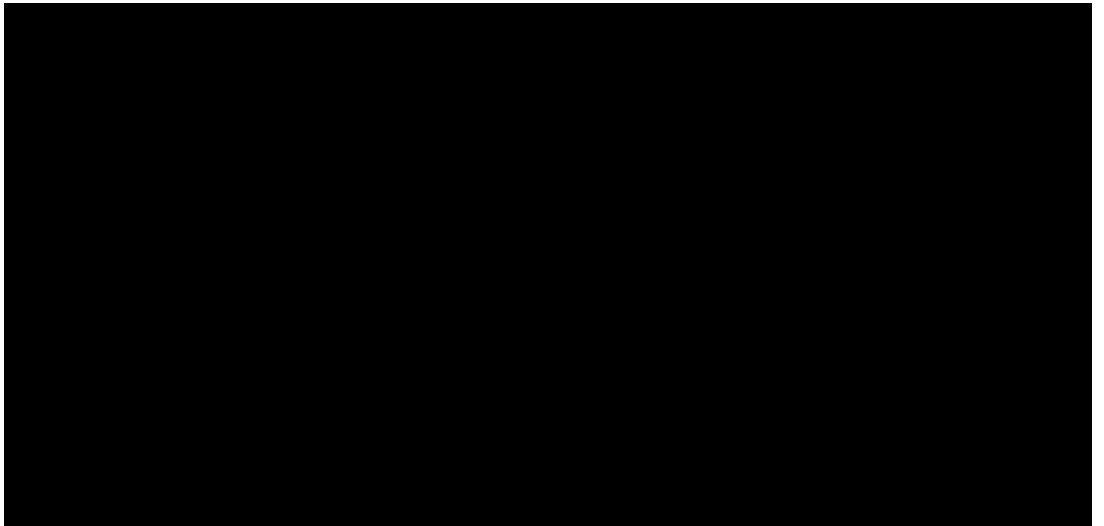
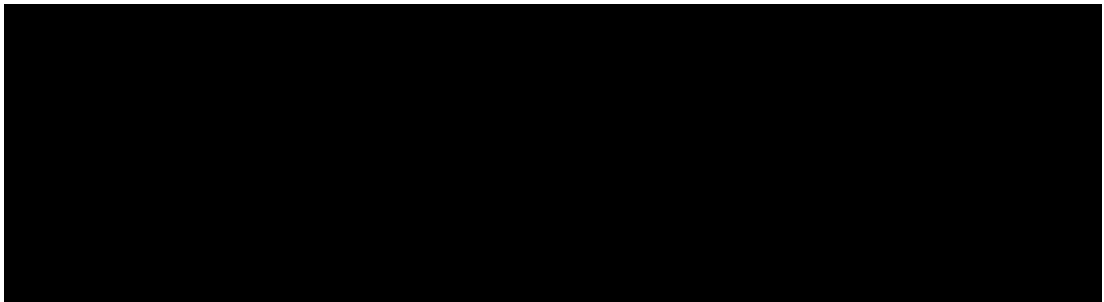
²⁹⁶ Scott, 28.



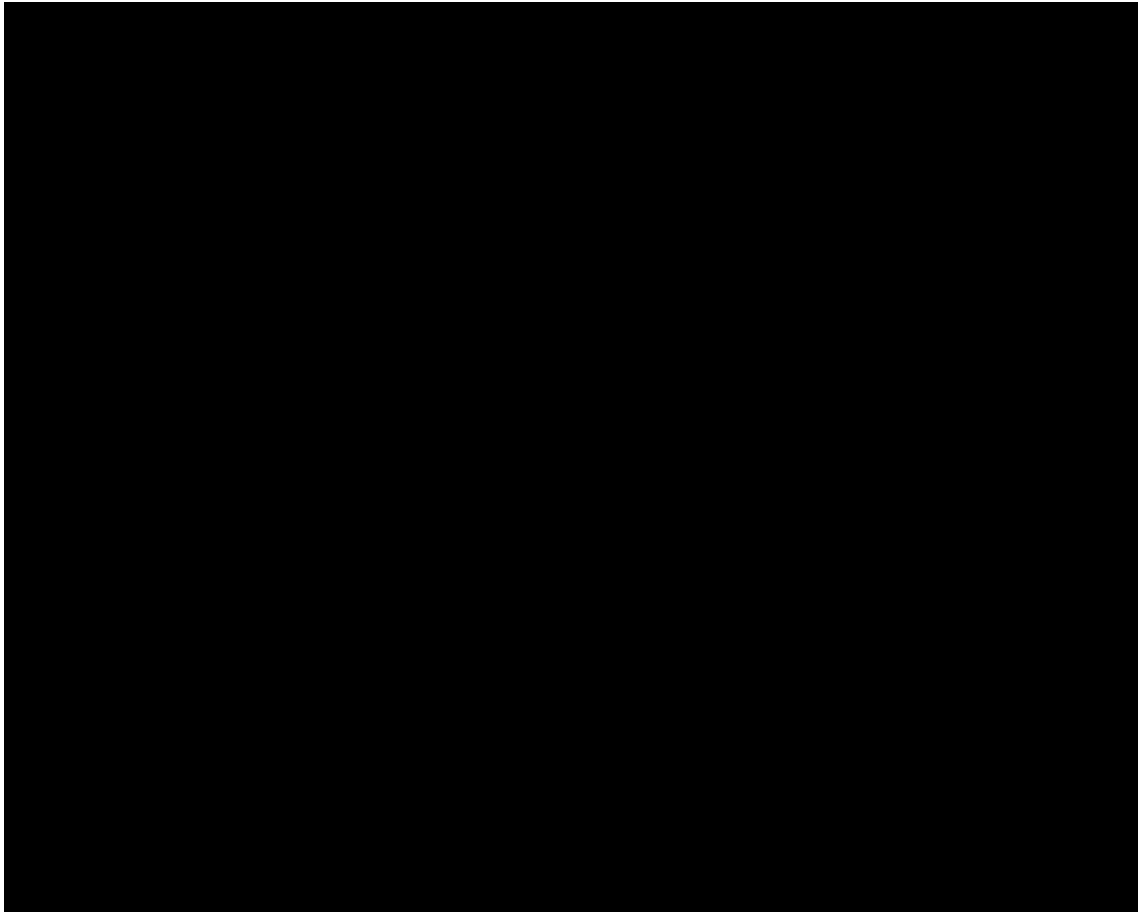
Contract pack customers

266 The names and contact details of a representative selection of route customers of Murray Goulburn, together with product sales data for those customers, are set out below.²⁹⁷

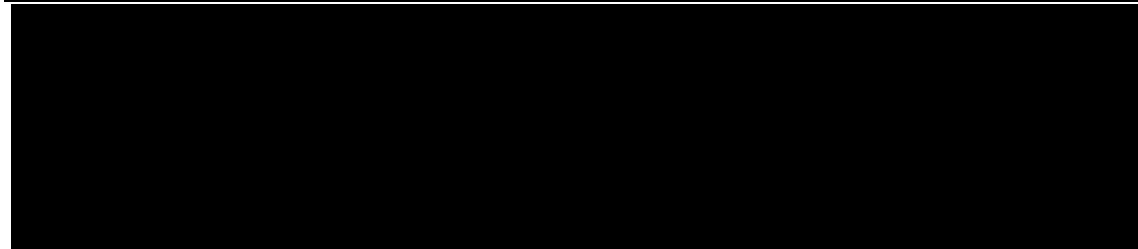
Customer	FY2013 sales	FY2014 forecast
-----------------	---------------------	------------------------



²⁹⁷ Scott, 31.



267



268

Customers of WCB

269 WCB's domestic retail business is small – it supplies:

- (a) Sungold branded daily pasteurised milk to route outlets, coffee shops and restaurants in Warrnambool;
- (b) Great Ocean Road braded daily pasteurised milk to Coles;
- (c) Great Ocean Road branded cheese to Coles; and



270 In addition, Murray Goulburn understands that WCB supplies dairy products to food service customers from time to time on a 'one-off' basis.³⁰⁰

²⁹⁸ Scott, 30.

²⁹⁹ Scott, 199

³⁰⁰ Scott, 179



271 Murray Goulburn is not aware of WCB supplying retail butter, milk powder, dairy desserts, yogurt or cream in Australia.

272 WCB does not supply UHT milk in Australia.

Customers of bulk dairy ingredients

273 Murray Goulburn supplies various dairy ingredients to customers in Australia including ingredients resellers and food manufacturers such as ice cream manufacturers and dessert and bakery manufacturers.³⁰¹

274 **[Confidential:** The following table contains a list of key customers (with contact details) for Murray Goulburn’s domestic ingredient business. The customers are ranked by sales value for FY 2013.³⁰²]

Customer	Tonnes	Value (AUD)	Contact

³⁰¹ Beniston, 43-44.

³⁰² Beniston, 44 and MB5.

³⁰³ MPD is Murray Goulburn’s business partner covering Murray Goulburn’s full range of products including bulk liquids for on-sale to other customers in a consolidated service that may include product from other domestic customers and imported product.

³⁰⁴ Ballantyne are a manufacturing customer where the primary product is butter which is repacked into consumer packs mainly for export sales.

³⁰⁵ Total Foodtec purchase product for further distribution to other customers as well as cheese for their cut-and-pack operation for sale into retail and foodservice outlets domestically.

³⁰⁶ McCAIN Foods Limited is an international leader in the frozen food industry, employing 20,000 people and operating 50 production facilities on six continents. They have a production facility in Ballarat, Victoria Murray Goulburn supplies them with a large proportion of their cheese requirements.



Customer	Tonnes	Value (AUD)	Contact

Bulk processed milk

275 [Confidential: Murray Goulburn supplies skim milk, semi-skim milk, wholemilk concentrate and milk permeate to customers in Australia in the volumes summarised below.³⁰⁸

Bulk product	Murray Goulburn volume supplied in FY2013 (tonnes)
Bulk cream	
Skim milk	
Semi-skim milk	
Wholemilk concentrate	
Milk permeate	

]

276 In FY2013, Murray Goulburn supplied over [redacted]

8.2 Describe the distribution channels available to the merger parties in supplying goods and services to customers and identify the relevant distribution channels in respect of each of the customers identified above.

277 The relevant domestic distribution channels for the customers set out above are:

- (a) grocery retailers;
- (b) food service wholesalers;

³⁰⁷ Danone MG is a joint venture partner concerned with the manufacture of yoghurt for domestic sale. Murray Goulburn's involvement is primarily focused on supplying bulk liquids for yoghurt manufacture.

³⁰⁸ Beniston, 59.

³⁰⁹ Beniston, 60.



- (c) route outlets, shops and small grocery stores in the Kiewa Valley;
- (d) other dairy producers for whom Murray Goulburn contact packs; and
- (e) industrial customers.³¹⁰

278 In relation to Murray Goulburn's ingredients business, Murray Goulburn has two distribution channels:

- (a) direct business channel, where Murray Goulburn contracts directly with the customer; and
- (b) strategic partners channel: when Murray Goulburn sells to an ingredients company that on-sell to the end user. The strategic partners operate a warehousing and handling facility, and are not a pure trader. Murray Goulburn often has a relationship with the end user.

8.3 Describe the existing supply arrangements that the merger parties have in place with the customers identified above and whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition.

279 In relation to the ingredients business, the majority of contracts for the supply of ingredients are 6-month contracts, based on volume and price. Some contracts for the supply of ingredients are for a duration of 3 months, and occasionally Murray Goulburn concludes spot contracts.³¹¹

280 In relation to supply to grocery retailers, generally private label products are supplied to through a tender process. Historically, grocery retailers have requested tenders on a yearly basis, however, more recently private label contracts have been entered into for longer terms.³¹² For branded products, grocery retailers generally conduct an annual or bi-annual 'range review', analysing products' overall performance and rates of sale to determine whether to retain those products the following year. Deletions are common.³¹³

281 In relation to food service customers, Murray Goulburn does not enter into supply agreements for specified time periods. Its dealings are generally transactional and relationship-based. Supply is generally on an 'as needs' basis, and Murray Goulburn has to price competitively to secure supply.³¹⁴

282 Supply to Murray Goulburn's Kiewa customers is through distributors.³¹⁵

9 Market concentration

Provide estimates of current and post-acquisition market shares for the merger parties and existing alternative suppliers or purchasers in the relevant market(s) identified above.

283 Murray Goulburn is only in a position to provide the following data in relation to market concentration.

³¹⁰ Scott, 12.

³¹¹ Beniston, 91.

³¹² Scott, 14.

³¹³ Scott, 15.

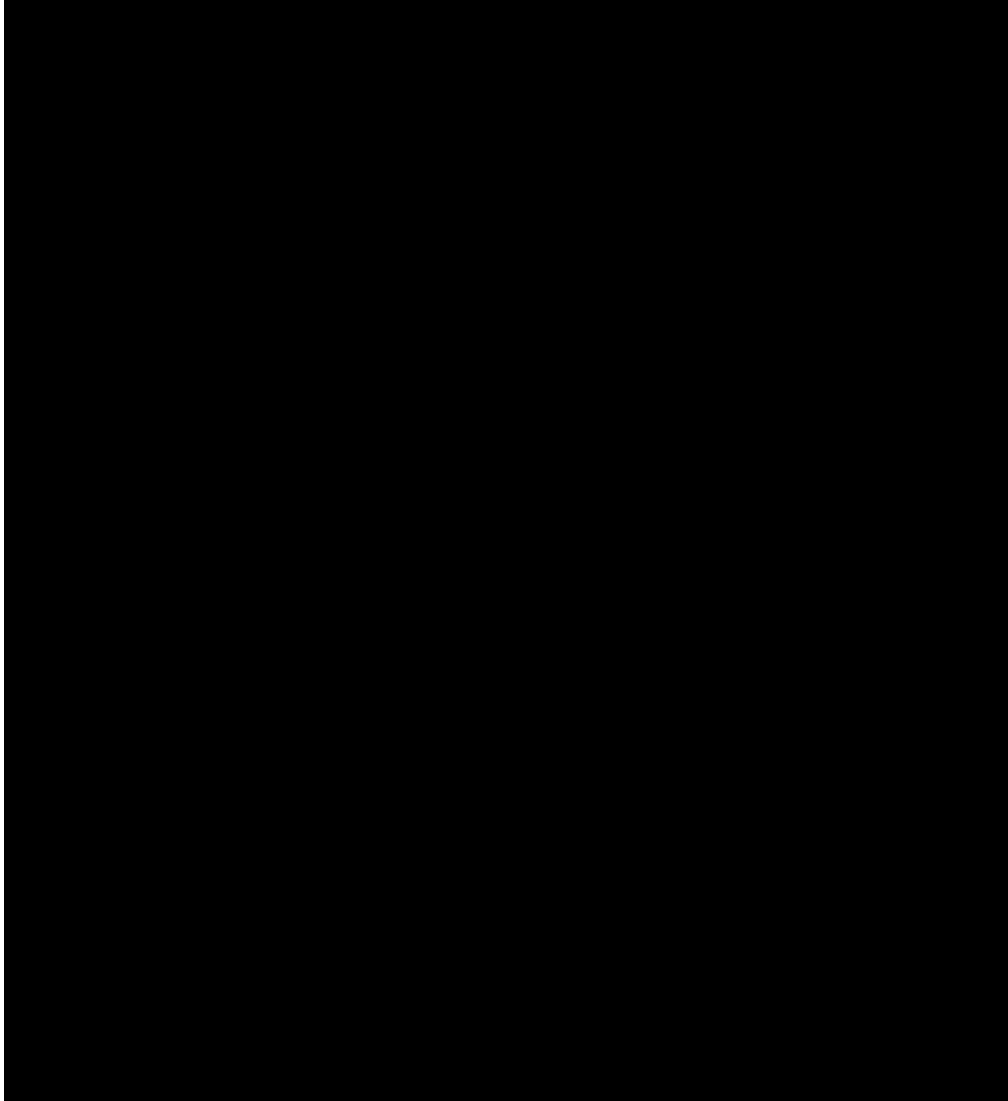
³¹⁴ Scott, 21.

³¹⁵ Scott, 26.



Volume shares for the acquisition of raw milk

284 The table below summarises the raw milk volumes acquired by each dairy company/processor for FY2013 in Victoria, South Australia and the Riverina region of New South Wales. All of DFMC’s milk is supplied to Lion. The figures next to Lion below represent milk that Lion acquired directly from farmers and do not include milk that DFMC farmers supplied to Lion.



285 Based on the above table, Murray Goulburn estimates that the current and post-acquisition volume shares for the acquisition of raw milk to be as follows.

	Murray Goulburn (current)	WCB (current)	Murray Goulburn and WCB (post-acquisition)
Raw milk acquisition – volume shares	43.7%	12.4%	56.1%



Shares of supply in relevant processed and semi-processed dairy product categories

- 286 Murray Goulburn is not able to provide market shares for the overall, unified, market for supplying processed and semi-processed dairy products in Australia.
- 287 Murray Goulburn is able to provide the following estimates of current and post-acquisition shares of sales for relevant downstream dairy product categories. For finished dairy products supplied to grocery retailers, the estimates are based on the national supply volumes to grocery retailers for the twelve-month period up to 27 October 2013 (as provided above in Section 7).

	Murray Goulburn (current)	WCB (current)	Murray Goulburn and WCB (post- acquisition)
Cheese			
UHT milk			
Butter/spreads/ margarine			
Daily pasteurised milk			
Flavoured milk			
Milk powder			
Fresh cream			

Shares of bulk ingredients supply

- 288 Both Murray Goulburn and WCB currently supply bulk cream in Victoria and South Australia. Murray Goulburn estimates that its current share of domestic ingredients sales is approximately [REDACTED].³¹⁶
- 289 The projected volumes and estimated shares in the supply of bulk cream for FY2014 are contained in the table below.³¹⁷

³¹⁶ Beniston, 43 and MB6.



Company	Volume (tonnes)	Volume share
---------	--------------------	--------------

290 In relation to the supply for bulk cream, the table below provides an estimate of the current and post-acquisition volume shares for the supply of bulk cream. The estimates are based the volume of bulk cream sold in FY2013 (as provided above in the table below paragraph 243 above).

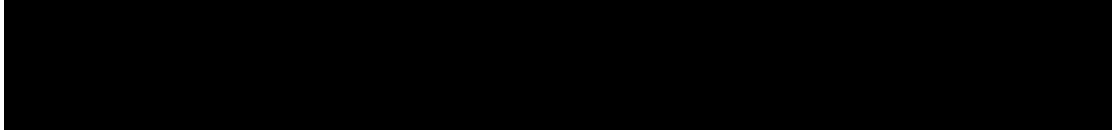
³¹⁷ Beniston.



Murray Goulburn
(current)

WCB (current)

Murray Goulburn and
WCB (post-acquisition)



10 Constraints on the exercise of market power

Provide details of the extent to which the merger parties are likely to be constrained post-acquisition from raising prices and profit margins and/or reducing the quality of good and/or services by:

10.1 Constraints on exercising market power or monopsony power in the market for raw milk in Victoria, South Australia and the Riverina region of New South Wales

291 Under the acquisition, concentration in the supply and acquisition of raw milk in Victoria, South Australia and the Riverina region of New South Wales will increase significantly, as compared with the status-quo, or an acquisition by a rival bidder such as Saputo.³¹⁸

292 This increase in concentration warrants close examination of the competitive constraints in this market, and in particular, whether there will continue to be effective constraints on Murray Goulburn's ability to exercise monopsony power as against dairy farmers when acquiring raw milk, or market power as against downstream buyers of raw milk.³¹⁹ However, for the following reasons, there will continue to be effective competitive constraints on Murray Goulburn in this regard post-acquisition:

- (a) Despite the increase in concentration, there will continue to be a large number of alternative buyers of raw milk, including many with excess processing capacity that should facilitate their ability to profitably increase purchases of raw milk.³²⁰ By corollary, these suppliers would also pose an effective constraint in the supply of raw milk to downstream customers.
- (b) There are companies in addition to dairy processors, such as ACM, who broker milk in the region, which may indicate that sunk costs in milk brokering are relatively low, and if so potential entry of further milk brokers would represent a significant constraint on market power, both in terms of purchasing raw milk from dairy farmers, and in terms of selling raw milk to downstream customers.³²¹
- (c) Murray Goulburn's gains and losses in terms of raw milk acquisition over the past three years, Fonterra is Murray Goulburn's most significant competitor. By contrast, Murray Goulburn obtained less than 13% of its additional milk from farmers previously supplied by WCB, and less than 10% of the milk it lost went

³¹⁸ Pleatsikas, 135.

³¹⁹ Pleatsikas, 136.

³²⁰ Pleatsikas, 137; cf. Poole, 117-119 and 121-126.

³²¹ Pleatsikas, 138; cf. Poole, 126.



to WCB. This indicates that WCB is not Murray Goulburn's closest competitor,³²² and

- (d) Murray Goulburn's co-operative structure is likely to have a protective influence on the price Murray Goulburn offers to dairy farmer suppliers, particularly given its stated business objective of increasing the farm gate milk price, and the control that farmer suppliers have over Murray Goulburn.³²³

10.2 Constraints on exercising market power in the downstream market (or markets) for processed and semi-processed dairy products

293 Under the acquisition, concentration in the market for process or semi-processed dairy products will not significantly increase, as compared with the status-quo, or an acquisition by a rival bidder such as Saputo, particularly given WCB does not supply a number of categories of processed and semi processed dairy products.³²⁴ The same applies even if there are separate markets for the various dairy product categories downstream.³²⁵

294 Further:

- (a) there will be no fewer than a dozen firms that supply processed and semi-processed dairy products to the Australian market post-acquisition;³²⁶
- (b) a number of dairy processors have excess capacity and could rapidly expand the amount of product they supply in response to any small but significant increase in price;
- (c) there are significant imports of dairy ingredients into Australia;³²⁷ and
- (d) Grocery retailer customers usually conduct annual or bi-annual range reviews, and commonly delete branded dairy products that have insufficient performance, even where those branded products have had high sales and margins. This provides the larger grocery retailers with considerable bargaining power against suppliers.³²⁸

10.3 Constraints on the exercise of market power in other markets

295 There would be plenty of competitive constraint on Murray Goulburn in supplying nutritional and higher margin ingredients (such as lactoferrin) post acquisition, given that these products are traded internationally, and there are a number of other suppliers of them.³²⁹

296 There is no suggestion that Murray Goulburn would not be constrained in supplying ancillary services to farmers post-acquisition.³³⁰ The constraints that apply in the raw milk

³²² Pleatsikas, 139; cf. Poole, 138 and RAP16.

³²³ Pleatsikas, 140; cf. Poole, 17.

³²⁴ Pleatsikas, 150.

³²⁵ Pleatsikas, 146 and 150; cf. Beniston, 48 and MB6, refer to Australian bulk ingredients numbers; Scott, 42, 64, 85, 105, 120, 149 and 162 – refer to volume share tables.

³²⁶ Pleatsikas, 155.

³²⁷ Beniston, 46, MB6.

³²⁸ Pleatsikas, 151; Scott, 15.

³²⁹ Pleatsikas, 153; Beniston, 110, 114, 115.

³³⁰ Pleatsikas, 162.



market would equally discipline Murray Goulburn in the supply of these services, and there are likely to be other suppliers of these services who are not dairy processors.³³¹

11 Imports

11.1 Provide details of the actual and potential level of imports in the relevant market(s) and details of the importers and their suppliers.

297 Table 1 below provide details of recent import volumes for major dairy products – covering the five years from FY2009 to FY2013. Table 2 below provide an historical snapshot of Australian dairy import trade over a forty year period from FY1971 to FY2011.³³²

Table 1: Australian Dairy Imports FY2009 to FY2013 (tonnes)

Product Group	FY2009	FY2010	FY2011	FY2012	FY2013
Butter	12,047	18,201	16,209	20,617	14,583
Butter Oil	1,350	1,545	2,063	2,063	3,047
Buttermilk Powder	1,951	1,851	1,323	2,080	1,770
Casein	998	630	855	855	857
Cheese	58,841	71,525	72,873	76,24	73,706
Condensed Milk	1,995	1,487	1,562	1,650	2,228
Cream	1,765	1,483	1,594	1,970	2,165
Ice Cream (000 ltrs)	14,282	17,887	20,090	20,367	20,743
Lactose	11,371	10,785	15,285	16,584	11,653
Milk	5,329	7,606	8,485	5,981	1,330
SMP	3,830	3,900	3,820	4,963	3,617
Whey Powder	13,829	12,801	13,943	15,056	13,468

³³¹ Poole, 138 and RAP16.

³³² Phillips, 116.



Product Group	FY2009	FY2010	FY2011	FY2012	FY2013
WMP	14,722	17,422	18,191	16,645	15,364
Yogurt	718	425	619	1,263	1,128

(Source: ABS data quoted in DA- Australian Dairy in Focus various editions.)

Table 2: Australian Dairy Imports FY1971 to FY2011 (tonnes)

Product	FY71	FY76	FY81	FY86	FY91	FY96	FY01	FY06	FY/11
Milk	n.p.	1,000	12,300	10,700	34,586	72787	82,574	86,151	70,917
Butter	68,750	55,535	7,820	26,593	29,487	22584	56,871	35,526	33,602
AMF	18,500	22,738	2,510	22,720	21,131	42067	53,176	37,687	18,064
Cream	9,230	7,991	18,700	10,700	13,800	13498	24,351	18,627	12,957
Cheese	34,433	34,533	54,100	68,441	62,872	118872	214,644	201,702	162,997
SMP	49,079	95,108	14,995	100,039	125,690	167215	217,704	217,087	155,355
WMP	16,727	23,966	53,920	40,804	44,606	87747	184,845	152,558	125,853
Whey Products			3,000	7,500	16,127	39207	43,408	76,181	37,815
Other powders	16,505	6,184	20,900	18,000	27,200	28100	62,600	94,800	108,200
Casein	26,516	15,446	10,600	7,130	3,190	4894	11,074	8,280	4,725



Product	FY71	FY76	FY81	FY86	FY91	FY96	FY01	FY06	FY/11
Yogurt	n.p	n.p.	n.p	n.p.	965	2251	3,053	3,402	4,018

(Sources: ABARES Australian Commodity Statistics various years; ADC Annual Reports (various editions); and DA – Australian Dairy in Focus (various editions).)

- 298 Murray Goulburn cannot provide specific detail of relevant importing firms, their products and their suppliers. This is because the ABS does not publish trade data at a level that will allow the identification of specific product importers, their domestic customers or their overseas supplier.³³³
- 299 Imports account for a significant (and growing) share of Australian dairy consumption in key dairy categories. In FY2013 Australia imported over 73,000 tonnes of cheese (about double the amount it imported in 2000). Imports now account for about a quarter of local cheese consumption. Firms also entered 17,000 tonnes of butterfat products, 30,000 tonnes of milk powder and whey powders and over 20 million litres of ice cream in FY2013. So imports accounted for 20, 40 and 5 per cent of local consumption of these products respectively last year. These high import penetration levels mean that, even if Australian dairy were to shrink back to focus purely on domestic outlets, there is no commercial guarantee that it will have the market to itself. Imports are a fact of life in Australian dairy consumption. Anecdotally, it is difficult for Australian firms to differentiate themselves from New Zealand product in the local market.³³⁴
- 300 Since New Zealand is the dominant import source of dairy product entering Australia, it may reasonably be inferred that Fonterra has a major role in this trade.³³⁵
- 301 Major supermarkets are significant outlets for branded New Zealand cheese lines but Murray Goulburn cannot identify whether these purchases are organised directly from Fonterra or via third party import agents.³³⁶
- 302 Australia has a well-established network of cheese importer/distributor firms that enter and distribute cheeses and other dairy ingredients for sale to local supermarkets, restaurants and specialty retail outlets. Much of the EU cheese that is sold in Australia would enter through these distributors. These firms often distribute imported lines in conjunction with local products. The large Chinese dairy company, Bright Foods, recently secured a 75% stake in Manassen Foods, one of the larger importer/distributors of local and imported cheese brands.³³⁷
- 303 There are a range of companies who use imported milk powder and butterfat. These include:
- (a) Firms who dry blend product with local ingredients to make health and nutritional supplements for domestic sale and/or re-export;
 - (b) Domestic manufacturers of products including bakeries, biscuit, desserts, ice cream etc; and

³³³ Phillips, 122.

³³⁴ Phillips, 123.

³³⁵ Phillips, 124.

³³⁶ Phillips, 125.

³³⁷ Phillips, 1236.



(c) Local dairy manufacturers adding imported ingredients to blended nutritional products or processed cheese manufacturing.³³⁸

304 Some of these firms will import product directly from overseas dairy manufacturers. Others buy product from a broad range of international trading houses that operate in Australia and overseas such as Hoogwegt.³³⁹

305 The emergence of the US as a supplier of bulk ingredients in recent years reflects the ongoing price competitiveness of this segment of the Australian food processing market (and the importance of exchange rate movements in the direction and volume of dairy trade).³⁴⁰

11.2 Describe any barriers to importation in the relevant market(s) including whether significant investment in facilities or in distribution arrangements is needed to facilitate importation.

306 Unlike many countries, Australia provides essentially free access to its market for dairy products. Tariffs on almost dairy product imports are set at zero, and this situation is reinforced by free trade commitments under agreements with major producers such as New Zealand (ANZCERTA 1983) and the USA (AUSFTA 2004).³⁴¹

307 Under WTO rules, Australia does apply a tariff rate quota (**TRQ**) on certain cheese imports from the European Union . However, the TRQ is not binding. Due to steadily growing domestic demand for specialty cheeses, importer companies regularly enter cheese volumes from the EU in excess of the TRQ limit.³⁴²

308 As with all food products, imported dairy foods are required to meet jointly agreed Australian-NZ food and documentation standards (or recognised third country equivalent standards).³⁴³

11.3 Describe facilities and distribution arrangements necessary for importation in the relevant market(s), their capacity and who has ownership or control of these facilities and arrangements.

309 The import trade for dairy essentially requires importer/distributors to have the capacity to handle containerised sea cargo and to warehouse and distribute products via refrigerated road transport. There appears to be well established infrastructure and capacity in all three area in all major capitals. Given the open access provided to Australia there is no reason to believe that there are any significant hurdles to this trade expanding in future years.³⁴⁴

11.4 Provide details of the price of imports as opposed to domestic production in the relevant market(s) and explain any divergence in these prices.

310 Prices in Australia are influenced by readily available imports. Murray Goulburn estimates that approximately 21% of sales of Ingredients in Australia is supplied by imported products. Many imports come from New Zealand and the United States, both these

³³⁸ Phillips, 127.

³³⁹ Phillips, 1238.

³⁴⁰ Phillips, 129.

³⁴¹ Phillips, 119.

³⁴² Phillips, 120.

³⁴³ Phillips, 121.

³⁴⁴ Phillips, 130.

countries are the beneficiaries of zero tariff trade agreements. As a result, in some cases importers are able to supply dairy products into Australia at prices below those that can be achieved by Murray Goulburn in export markets. Imports are supplied into Australia across all Ingredients categories. Projected levels of imports in each Ingredients category for the 2014 financial year are listed in Exhibit MB6.³⁴⁵ Barriers to importation are relatively low and primarily consist of importation licencing, customs clearance and freight costs.³⁴⁶

11.5 Provide details as to the extent of constraint which would be likely to be provided by imports on domestic suppliers including the merger parties in the relevant market(s) post-acquisition.

311 As mentioned in response to question 11.4 above, Murray Goulburn estimates that approximately 21% of sales of Ingredients in Australia consist of imported products.³⁴⁷ Where imports are available, the price of these imports will constrain the price of substitutable products supplied by the merger parties post-acquisition.

12 Exports

12.1 Provide details of the actual and potential level of exports in the relevant market(s).

312 Table 3 below provide details of recent export volumes for major dairy products – covering the five years from FY2009 to FY2013. Table 4 below provide an historical snapshot of Australian dairy export trade over a forty year period from FY1971 to FY2011.³⁴⁸

Table 1: Australian Dairy Exports FY2009 to FY2013 (tonnes)

Product Group	FY2009	FY2010	FY2011	FY2012	FY2013
Butter	42,144	39,460	31,010	32,596	38,004
Butter Blend	2,606	3,187	3,420	1,437	1,840
Butter Oil	21,358	25,756	18,065	12,057	11,525
Buttermilk	453	436	565	419	
Buttermilk Powder	9,551	11,178	10,081	8,927	9,368
Casein	7,634	9,623	4,725	4,185	4,158

³⁴⁵ Beniston, MB6.

³⁴⁶ Beniston, 46.

³⁴⁷ Beniston, 46.

³⁴⁸ Phillips, 116.

Product Group	FY2009	FY2010	FY2011	FY2012	FY2013
Cheese	144,664	168,114	162,997	160,863	174,061
Condensed Milk	17,355	18,157	12,957	12,653	11,928
Ice Cream	6,218	6,877	7,597	8,311	6,686
Infant Powder	17,606	12,293	9,551	5,989	7,597
Lactose	7,112	18,746	21,867	23,495	24,872
Milk	69,132	71,915	77,159	91,295	106,477
Mixtures	46,671	72,147	97,103	104,231	113,257
Protein	169	585	341	240	275
SMP	162,081	125,623	155,336	141,318	146,916
Whey Powder	65,161	53,721	37,814	41,738	40,916
WMP	140,427	104,456	116,302	110,120	96,215
Yogurt	3,375	3,132	4,018	4,517	4,688
Grand Total	763,715	745,406	770,907	764,392	798,782

(Source: ABS data quoted in DA- Australian Dairy in Focus various editions.)

Table 2: Australian Dairy Exports FY1971 to FY2011 (tonnes)

Product	FY71	FY76	FY81	FY86	FY91	FY96	FY01	FY06	FY/11
Milk	n.p.	1,000	12,300	10,700	34,586	72,787	82,574	86,151	70,917
Butter	68,750	55,535	7,820	26,593	29,487	22,584	56,871	35,526	33,602
AMF	18,500	22,738	2,510	22,720	21,131	42,067	53,176	37,687	18,064
Cream	9,230	7,991	18,700	10,700	13,800	13,498	24,351	18,627	12,957



Product	FY71	FY76	FY81	FY86	FY91	FY96	FY01	FY06	FY/11
(1)									
Cheese	34,433	34,533	54,100	68,441	62,872	118872	214,644	201,702	162,997
SMP	49,079	95,108	14,995	100,039	125,690	167215	217,704	217,087	155,355
WMP	16,727	23,966	53,920	40,804	44,606	87747	184,845	152,558	125,853
Whey Products			3,000	7,500	16,127	39207	43,408	76,181	37,815
Other powders	16,505	6,184	20,900	18,000	27,200	28100	62,600	94,800	108,200
Casein	26,516	15,446	10,600	7,130	3,190	4894	11,074	8,280	4,725
Yogurt	n.p	n.p.	n.p	n.p.	965	2251	3,053	3,402	4,018

(Sources: ABARES Australian Commodity Statistics various years; ADC Annual Reports (various editions); and DA – Australian Dairy in Focus (various editions).)

- 313 Of the six major dairy companies in Australia, four are significant exporters – Murray Goulburn, Fonterra, WCB and Bega. Other regional firms like Burra Foods, Longwarry and Harvey Fresh export a significant part of their annual output. Australian dairy exporters employ a mixture of distribution channels into export markets including direct customer contracts, sales through local and international trading houses and the placement of product on the international *Global DairyTrade* on-line auction system.³⁴⁹
- 314 While their importance will vary by channel, the key markets for Australia by volume and value are Japan, China, the nations of ASEAN, New Zealand, the United Arab Emirates, Korea and Taiwan.³⁵⁰
- 315 As with import trade, detailed company level data on exports of dairy products and export customers is held confidentially but not released by the ABS and or DA.³⁵¹
- 316 Murray Goulburn is the largest Australian dairy exporter, with sales to over 50 countries. It operates sales offices in 3 countries. According to its 2013 Annual Report, export sales account for 48 per cent of the firm's annual sales revenue. While they account for a slightly lower proportion of the company production by volume (45 per cent), it is likely that exports will account for over 50 per cent of MG's milk solids intake.³⁵²
- 317 75 per cent of MG's export sales are consumed in Asia, followed by the Middle East and the USA. Key export products and markets are:

³⁴⁹ Phillips, 129.

³⁵⁰ Phillips, 130.

³⁵¹ Phillips, 131.

³⁵² Phillips, 132.



- (a) Cheese –Japan, North Asia and the Middle East;
 - (b) Milk powders and butterfat - ASEAN, China;
 - (c) Infant formulas, specialty ingredients – China, USA, South East Asia.³⁵³
- 318 Export sales account for a similar proportion of WCB sales revenues. By product, WCB exports:
- (a) 40 per cent of cheese production to Japan, the Middle East, Korea and USA;
 - (b) over 90 per cent of its SMP to the Middle east, Japan, China;
 - (c) over 90 per cent of its Whey products to Japan, China and the USA;
 - (d) a smaller percentage of butter to Japan, Korea and the Middle East;
 - (e) most of the Galacto-oligosaccharide ingredient produced with its Great Ocean Ingredients joint venture, while its planned lactoferrin specialty ingredient will be sold to China.³⁵⁴
- 319 The percentage of Fonterra’s Australian production that the company exports has varied over time, subject to internal company decisions about the sourcing of product for Fonterra’s global supply network. In recent years recorded powder mixture exports from Australia to New Zealand have risen sharply. Given New Zealand’s small population, Murray Goulburn believes that much of this trade would involve Fonterra product (and also other firms) that will be re-blended with other ingredients in that country before being re-exported to third countries.³⁵⁵
- 320 Exports account for around 25 per cent of Bega’s overall sales revenue. However, the export orientation of its different processing facilities varies widely. Most of the output of its plant in Tatura, Victoria – milk powders, infant formula and cream cheeses - is destined for export sale in North Asia and the Middle East.³⁵⁶
- 321 Other milk powder manufacturers like Burra Foods sell a high percentage of their output to customers in North and South East Asia and the Middle East.³⁵⁷
- 322 Murray Goulburn refers to and relies upon the statements of Maldwyn Beniston and Craig Norgate.
- Murray Goulburn’s international supply of bulk dairy ingredients**
- 323 Murray Goulburn currently exports [REDACTED], with Murray Goulburn’s largest export markets for FY2013 being [REDACTED] MB17 contains a full list of countries (and customers) to which Murray Goulburn exported ingredients in FY2013 and Murray Goulburn’s export volumes.³⁵⁸
- 324 Murray Goulburn has in-market offices in Dubai, Japan, Singapore and Vietnam.³⁵⁹ In-market offices are important for developing deep customer relationships broadly across a

³⁵³ Phillips, 133.

³⁵⁴ Phillips, 134.

³⁵⁵ Phillips, 135.

³⁵⁶ Phillips, 136.

³⁵⁷ Phillips, 137.

³⁵⁸ Beniston, 89.

³⁵⁹ Beniston, 90.

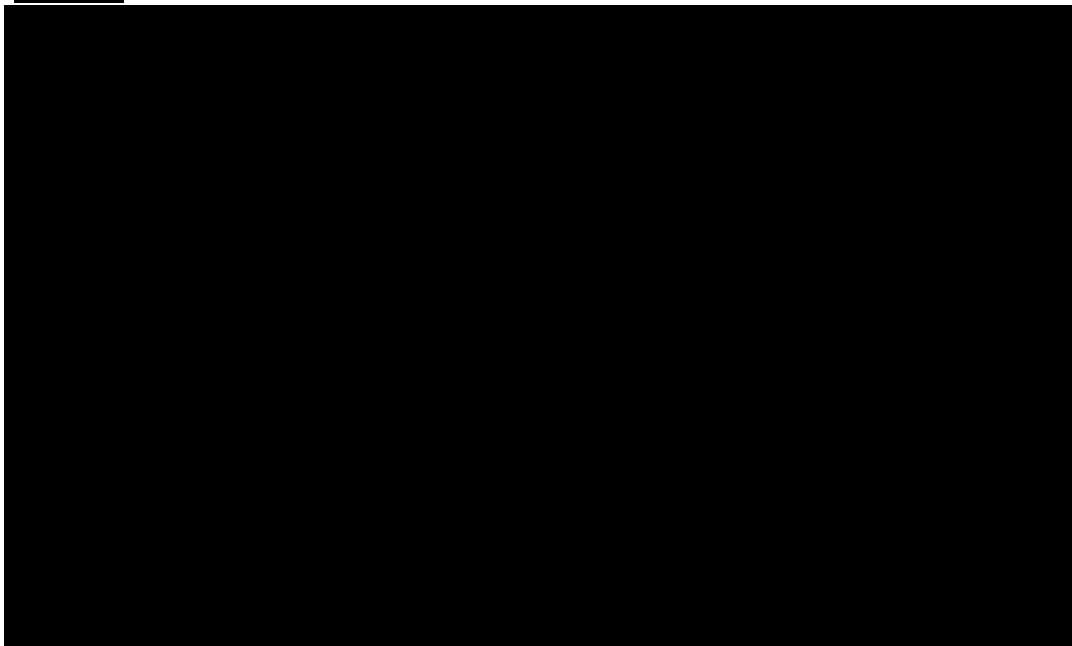


customer's operations, which are critical for facilitating and identifying innovative product opportunities with those customers.³⁶⁰

325 Murray Goulburn's products are able to command a price premium in international markets because of Murray Goulburn's well regarded brand.³⁶¹

326 Murray Goulburn's ingredients export sales have declined significantly over the past 10 years, from [REDACTED]

[REDACTED]³⁶² The following graph records Murray Goulburn's decline in export sales.



327 Murray Goulburn's export volumes have declined because of lower availability of raw milk volumes in Australia during this period.³⁶³

328 [REDACTED]

Murray Goulburn's supply of nutritional products internationally

329 Murray Goulburn currently has capacity to produce approximately [REDACTED]
[REDACTED]³⁶⁴

330 Murray Goulburn has a processing plant in China that blends and packages nutritional products for domestic supply in China. Murray Goulburn currently exports [REDACTED]

³⁶⁰ Beniston, 90.

³⁶¹ Beniston, 123.

³⁶² Beniston, 92.

³⁶³ Beniston, 93.

³⁶⁴ Beniston, 94 and MB26.

³⁶⁵ Beniston, 110-111.



[REDACTED] to be processed in its China based processing plant.

331 Demand for nutritional products in Asia, especially China, is forecast to grow in excess of 10% per year, and Murray Goulburn estimates that demand from its existing customer base will exceed [REDACTED]

332

[REDACTED]

333 WCB is party to a 50/50 joint venture with Royal Friesland Campina that manufactures ingredients used in Nutritional products.³⁶⁸

334 Saputo, Inc (**Saputo**) does not currently produce finished Nutritional products.³⁶⁹

335 In order to successfully produce and supply nutritional products, a dairy processor requires:

- (a) Production facilities capable of producing high quality base ingredients and access to high quality vegetable oils and specialty micronutrients;
- (b) Development and ownership of intellectual property rights and technical know how;
- (c) Strong customer relationships, with commitments from at least one large global customer to underwrite the necessary investment requirements;
- (d) Control over the raw milk supply chain from farm to finished and packaged product; and
- (e) Quality control systems.³⁷⁰

12.2 Describe the export barriers faced by suppliers of inputs to the merger parties in the relevant market(s).

336 Despite the growth in trade volumes, it is important to recognise that Australia is a very small player in world dairy production (just over 1%). The international dairy market also represents only a minor fraction of world dairy production/consumption (under 10%). Most dairy products are consumed in their country of production, and the major dairy production regions - the EU, USA, India and Russia are all much larger than the international traded dairy market. A corollary of most countries having a domestic dairy industry is that most governments act to protect local milk production from import trade. As a result, access for dairy products to many countries is heavily restricted either by explicit bans, import quotas, very high tariffs (+100% rates of landed value are common) or technical barriers to imports ranging from local content schemes, specified end user requirements, factory inspection and registration systems or commercially restrictive food testing regimes.³⁷¹ In the absence of substantial World Trade Organisation (**WTO**) reforms, this situation is likely to remain in force for a considerable time.

³⁶⁶ Beniston, 112.

³⁶⁷ Beniston, 114.

³⁶⁸ Beniston, 115.

³⁶⁹ Beniston, 116.

³⁷⁰ Beniston, 117.

³⁷¹ Some examples of this are - Japan imposes a tariff on non-quota butter imports of over 300%, Korean applies a tariff of 180% on milk powders. Malaysia allows fresh milk entry but not in consumer packs and import licenses are allocated to competing local processors.



- 337 Equally importantly, the size of large dairy producer like the EU and US mean that relatively small production shifts in these countries can significantly alter the international supply demand balance for dairy and fundamentally affect export pricing and market returns. In this context, the EU is planning to remove domestic milk production quotas after 2015 which will likely see the growth in export availability from that region from 2016/17. The Irish government has announced plans to support a 50% expansion of local milk production post-2015.
- 338 Most large dairy firms in the US and EU are gearing up for export growth. Some of these firms are very large and can use their large domestic market bases to cross –subsidize marginal growth in export sales, at the expense of smaller export competitors like Australia. (See comments on the scale of overseas production below)
- 339 International dairy trade flows are also strongly influenced by several hundred regional and bilateral trade agreements that favour supply from specific countries of origin. A significant share of current world dairy trade reflects binding bilateral quota and preference arrangements (like EU exports of cheese to the US, NZ exports of butter to the EU). Australia’s dairy’s position in the growth markets of North Asia is subject to several trade policy risks. For example:
- (a) The China NZ Free Trade agreement allows NZ to enter milk powders, butter and cheese to that market at considerable duty discounts to Australian suppliers (6-10%).
 - (b) The NAFTA agreement gives US firms preferential access to Mexico’s drinking milk, milk powder and butterfat markets
 - (c) Korea’s recent Free Trade Agreements with the EU and USA will increasingly provide exporters from those countries with preferential access conditions for cheese and milk powder lines compared to Australia
 - (d) The recent EU Canada in-principle CETA accord (may set up a framework that the EU will use to restrict future opportunities for specific cheese varieties produced in Australia)
- 12.3 Provide details of the sale price of exports as opposed to domestic sales in the relevant market(s) and explain any divergence in these prices.**
- 340 There is a strong relationship between domestic and export prices, and these prices are heavily dependent on global dairy prices.³⁷² The domestic price is essentially determined by the global price plus a premium taking into account the cost of overcoming the import barriers described above, as well as the convenience of dealing with a local producers.³⁷³
- 12.4 Describe whether the suppliers of inputs to the merger parties are or would be able to export such inputs post-acquisition and, if so, describe the extent of constraint this would be likely to provide on the merger parties post-acquisition.**
- 341 Both Murray Goulburn and WCB manufacture their products using raw milk as the base input.³⁷⁴ Due to its perishability, raw milk must be processed within 50 hours of receipt

³⁷² Beniston, 45.

³⁷³ Beniston, 46.

³⁷⁴ Beniston, 18, MB1.



and cannot be exported.³⁷⁵ Suppliers of raw milk do not currently export their products direct, nor would they be able to do so post-acquisition.³⁷⁶

13 Barriers to entry and expansion

13.1 Provide details of any barriers to entry and expansion in the relevant market(s).

342 The manufacturer of dairy products requires access to raw milk, plant facilities for the production of specific dairy products, land and buildings (located in an area with a climate favourable to raw milk production) as well as relevant technical knowledge.

343 Specific issues contributing to barriers to enter the market or markets for the supply of processed and semi-processed dairy products are:

(a) **Access to raw milk:** Raw milk production in Australia has declined by almost 20% over the last decade and declining production levels are a significant constraint on industry. As raw milk is the primary ingredient in the manufacture of dairy products and scale is an important factor impacting on manufacturing efficiency, limits in milk supply constrain the ability to invest in the industry.³⁷⁷

(b) **Investment costs:** the construction of a new dairy processing plant can involve substantial capital expenditure, although this very much depends on the products

- the basic infrastructure required to build a new dairy processing plant on a greenfield site is approximately \$50 – 70 million., this includes water treatment facilities and other effluent systems, electrical transformers, storm water storage and access roads. This basic infrastructure costs must be incurred, regardless of the type of product produced.
- The total cost of building a milk powder plant with a single spray dryer would be approximately \$200 – 220 million. The total cost of building a drinking milk processing facility would be lower. Murray Goulburn’s new milk processing plants at Laverton and Erskine Park will cost approximately \$160 million in total.³⁷⁸].

The approximate minimum costs in acquiring equipment and building special infrastructure to produce various dairy products are set out in the following table.

End product	Approximate cost	Comments
Liquid milk (including flavour milk)	\$60m	Estimated maximum annual production is 250 million litres of liquid milk.

³⁷⁵ Beniston, 22.

³⁷⁶ Beniston, 41.

³⁷⁷ Mentimplay, 49.

³⁷⁸ Mentiplay, 85-88.



End product	Approximate cost	Comments
Cheese (and whey)	Cheese: \$100m Whey: \$50m	As whey is a by-product of cheese production, whey-handling equipment is necessary. Whey itself is sold as a product. Estimated maximum annual production is 2,000 tonnes.
Standard milk powders	\$100m	Estimated maximum annual production is 50,000 to 60,000 tonnes.
Special milk powders	\$150m	Estimated maximum annual production is 50,000 to 60,000 tonnes. The additional cost arises from further equipment to meet hygiene standards in producing special powders.
Butter and cream	\$50m	This equipment matches the capacity of the aforementioned dryers. Estimated maximum annual production is 10,000 tonnes.
Fresh dairy (eg yoghurt)	\$50m	Estimated maximum annual production is 50,000 to 60,000 tonnes.

The cost of entry depends on the particular dairy product. For example, the cost of entry in producing multiple dairy products is high, as reflected in the above while the cost of entry in producing specific dairy products such as cut and shredded cheese I slow (as it merely involves buying block cheese, including off-cuts, cutting it and packing it into bags).³⁷⁹

- (c) **Substantial lead times:** A new entrant which seeks to enter the dairy processing industry on its own and build a new dairy processing plant will face substantial lead-time before it can begin to sell products. This is because of the time required to construct a new plant and to put in a purchase order for equipment. The majority of dairy equipment is manufactured in Europe and is built to order. In particular, given the growing demand for special milk powders such as infant nutrition, there are likely to be significant delays in acquiring spray dryers capable of processing raw milk into infant nutrition powders. Overall, it would take at least 2 years for a dairy processing plant to be built and commissioned.³⁸⁰

344 For most finished dairy products, there is now little brand loyalty, and a large amount of promotional activity in their sale to consumers, especially in relation to cheese to consumers. Consumers generally base their purchasing decisions entirely on price. For example, Bega engaged in intense promotional activity in the first half of 2013, matching

³⁷⁹ Mentiplay, 82.

³⁸⁰ Mentiplay, 90.



the price of private label cheese. During that time, Murray Goulburn's branded cheese sales drastically decreased.

345 There has also been a significant increase in private label product sales. Private label products are now competing on an equal footing with branded products.

13.2 Provide details of any firms not currently supplying or acquiring goods or services in the Relevant Market(s) but which could enter the Relevant Market(s) quickly and provide an effective competitive constraint in the Relevant Market(s) to the merged entity.

346 None identified

13.3 Provide details of any firms which have recently tried and failed to enter the relevant market(s), including the reasons (if known) for their failure.

347 None identified

14 Dynamic characteristics

Provide details of the dynamic characteristics of the relevant market(s).

348 The features of the relevant markets are discussed in response to question 5 above.

15 Vigorous and effective competitor

Indicate whether the Target or any other participant in the relevant market(s) could be described as a vigorous and effective competitor to the Applicant or other market participants to any and to what extent, and why.

349 WCB principally competes for the acquisition of raw milk. There is no evidence that it could be described as a "vigorous and effective competitor" in the supply of downstream dairy products.

16 Vertical integration

16.1 Describe whether the acquisition would, or would be likely to, result in increased vertical integration between firms involved at different functional levels in the relevant market(s).

350 Not applicable.

16.2 Describe whether the acquisition would, or would be likely to, increase the risk of limiting the supply of inputs or access to distribution such that downstream or upstream rivals face higher costs post-acquisition or full or partial foreclosure of key inputs or distribution channels.

351 Not applicable.



17 Prices and profit margins

17.1 Provide details of recent and current levels of pricing in the relevant market(s) including the use of rebates and discounts.

Raw milk

352 In relation to the acquisition of raw milk, the table below shows Murray Goulburn's opening price, step-ups and closing price over the past five years.³⁸¹

	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013
Opening Price	5.12	5.51	3.55	4.83	4.94	4.50
Step-ups	1.64	-0.72	0.87	0.81	0.50	0.46
Closing price	6.76	4.79	4.42	5.64	5.44	4.96

353 Murray Goulburn pays a different price for different grades of milk. For example, discounted prices are payable where:

- (a) milk is of 'Premium 2' or 'Base' quality;³⁸² or
- (b) a farmer's milk tests positive for inhibitory substances.³⁸³

354 The process by which Murray Goulburn sets its prices for the acquisition of raw milk is described in section 6.3 above.

Downstream dairy products

355 Pricing of key categories of downstream dairy products is discussed below.

356 **Cheese:** Consumers generally have little brand loyalty, basing their purchasing decisions entirely on price.³⁸⁴ The sale of cheese is highly promotionally driven.³⁸⁵

357 **UHT milk:** The price of branded UHT milk has not changed since 2008 as the major grocery retailers will not accept price increases.³⁸⁶

³⁸¹ Poole, 202.

³⁸² Poole, 69.

³⁸³ Poole, 206.

³⁸⁴ Scott, 43.

³⁸⁵ Scott, 53.

³⁸⁶ Scott, 70.

³⁸⁷ Scott, 71.



358 **Butter / spreads:** The price of butter and spreads has remained stagnant since 2008.³⁸⁸

359



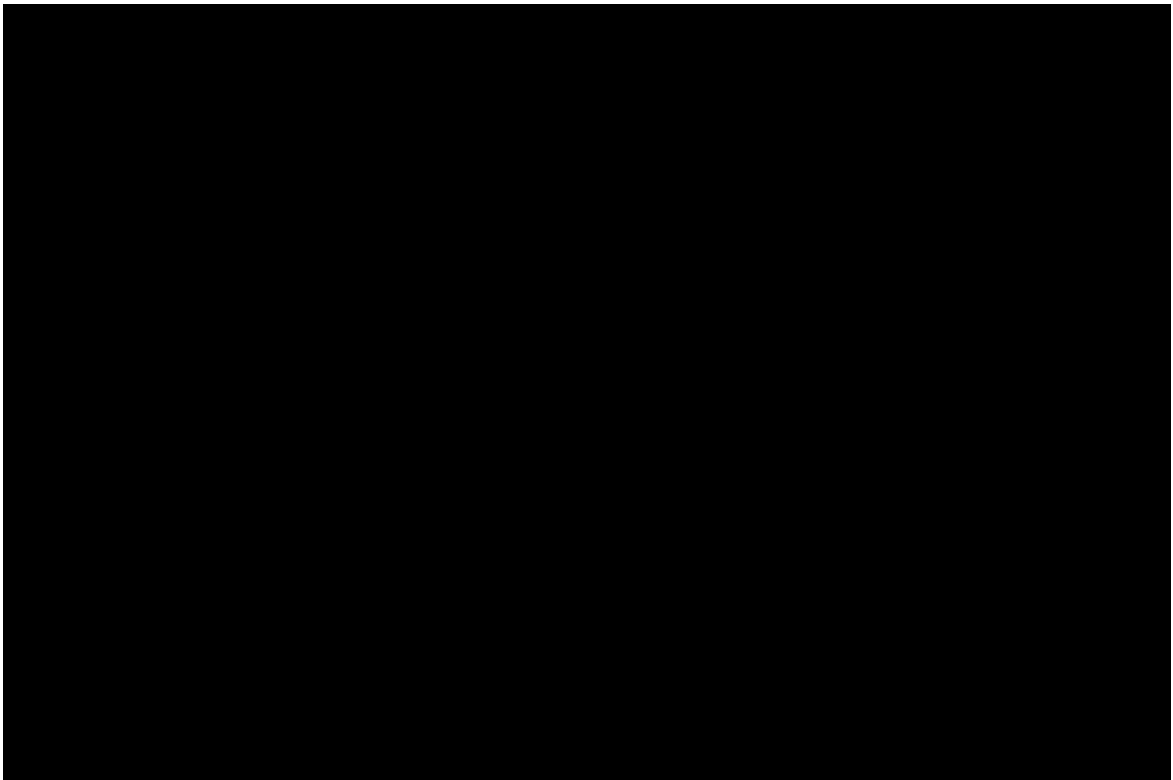
360 **Flavoured milk:** Murray Goulburn's flavoured milk is priced near the price of Farmers Union's flavoured milk because Farmers Union is the leading brand.³⁹⁰

Ingredients

361 Ingredients sales can be divided up along a value continuum, with commodity products at the low end of the continuum and specialty Ingredients at the upper end. As products move further up the value continuum they achieve a higher premium above the base commodity price. This is due to the higher degree of customisation and risk that is involved in making more specialised products.³⁹¹

17.2 Provide details of supply costs of goods and services supplied by the merger parties including manufacturing, marketing and distribution costs in the relevant market(s).

362



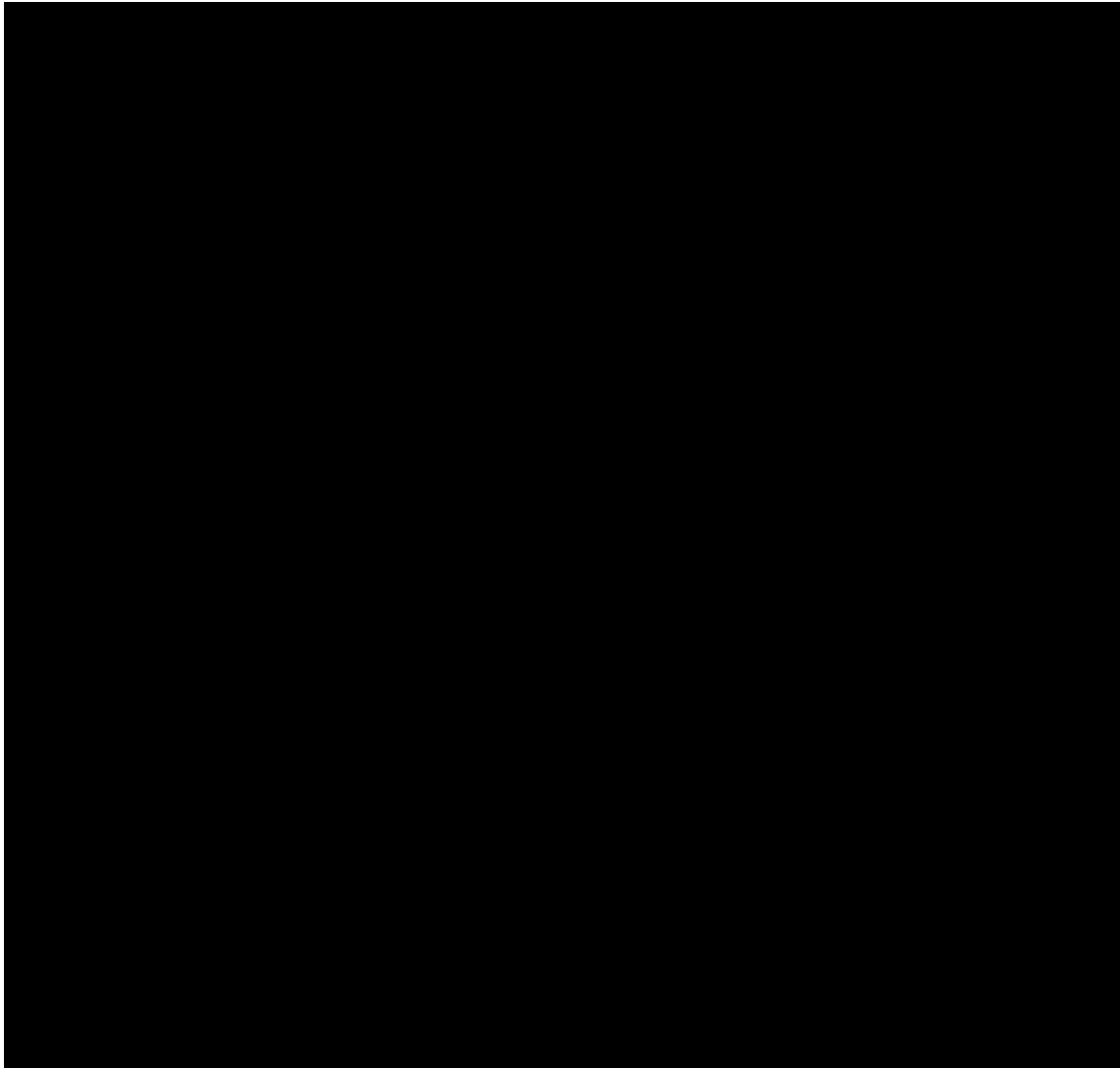
³⁸⁸ Scott, 86.

³⁸⁹ Scott, 109.

³⁹⁰ Scott, 124.

³⁹¹ Beniston, 19.

³⁹² Barnett, 53.



363

364 Before goods are stored in warehouses and distributed, there are costs involved in transporting raw milk from farm to processing plant. [REDACTED]

365 To lower its transport costs, Murray Goulburn aims to use the lowest number of trucks required to collect all raw milk from its farmer suppliers in each region – North, West and Gippsland – by arranging collection routes that can be completed in the shortest time period and involve the shortest driving distance.³⁹⁵

366 For Murray Goulburn, the average number of daily pick-ups per region is significantly higher in the North and Gippsland regions, as compared with the West region, because the farms in the West region are substantially larger. That means the milk yield per pick-up is higher in the West.³⁹⁶

³⁹³ Barnett, 54.

³⁹⁴ McDonald, 11.

³⁹⁵ McDonald, 22.

³⁹⁶ McDonald, 30, Confidential Annexure MM1 and Confidential Annexure MM3.



367



17.3 Describe the competitive constraints, if any, which would, or would be likely to, prevent the merger parties from being able to significantly and sustainably increase the prices paid by their customers, or lower the prices paid to their suppliers, post-acquisition in the relevant market(s).

368 The proposed merger would not result in lower prices paid to the merger parties' suppliers of raw milk, due to the existence of the following competitive constraints:³⁹⁸

- (a) Despite any increase in concentration, there are a large number of alternative raw milk buyers that will remain active in the relevant market, including both raw milk processors and brokers of raw milk. Given the ability of farmers to shift their raw milk sales to alternative buyers (both within dairy farming regions and outside their dairy farming region), the existence of a large number of alternative buyers is consistent with a conclusion that competition for purchases of raw milk will not be substantially lessened.³⁹⁹
- (b) In addition to dairy companies that process raw milk, both dairy companies and other entities broker raw milk to other dairy processors. Potential entry may also represent a significant constraint on the exercise of any market power.⁴⁰⁰
- (c) The co-operative structure of Murray Goulburn can be expected to have a protective influence on the price offered by Murray Goulburn to raw milk suppliers. Murray Goulburn's primary objectives according to its constitution include the acquisition of milk from its shareholders and its stated business objective is to significantly increase the farmgate milk price. The co-operative's voting members are all active raw milk producers in the co-operative and voting power is distributed roughly in proportion to the volume of milk they supply. Given the stated goals of the co-operative (eg, to increase the price paid for raw milk) and explicit provisions to align management incentives with those of the suppliers of milk, the co-operative has an incentive to increase the price it pays for raw milk. This is the opposite of the effects that would be expected if competition were to be substantially lessened among buyers of raw milk.⁴⁰¹
- (d) If a merger generates significant efficiencies either through decreased incremental costs or via an enhancement in the merged firm's ability to compete, these efficiencies may reduce or completely offset any incentive for the merged firm to raise downstream prices. Further, when paired with a co-operative structure, such efficiencies may be passed on to members (ie, dairy farmers, the group most likely to be adversely affected if an SLC were to occur) in the form of increased input prices at the farmgate.⁴⁰²

³⁹⁷ McDonald, 35, Confidential Annexure MM1.

³⁹⁸ Pleatsikas, 141.

³⁹⁹ Pleatsikas, 142.

⁴⁰⁰ Pleatsikas, 143.

⁴⁰¹ Pleatsikas, 145.

⁴⁰² Pleatsikas, 146.



17.4 Describe the impact of the acquisition on the potential for coordinated conduct between remaining competitors in the relevant market(s) post-acquisition.

369 Apart from the merger parties, there are many competitors for the acquisition of raw milk. There are also many competitors for the downstream supply of finished dairy products. Therefore, the proposed acquisition would not materially increase any potential for coordinated conduct between the remaining competitors.⁴⁰³

370 Moreover, as mentioned in the above response, as the merger is likely to generate significant efficiencies either through decreased incremental costs or via an enhancement in the merged firm's ability to compete, these efficiencies may reduce or completely offset any incentive for the merged firm to raise downstream prices.⁴⁰⁴

17.5 Describe the likely impact of the acquisition on the profit margins of the merger parties post-acquisition and the expected cause of any change.

371 The proposed acquisition may not have a direct impact on Murray Goulburn's finished dairy domestic products business. However, acquiring WCB will provide an increase in milk supply, which will allow Murray Goulburn greater flexibility in its business. To the extent the proposed acquisition results in Murray Goulburn having access to a larger milk pool, that would ease the tension between the need to meet Asian demand and domestic requirements.⁴⁰⁵

18 Related markets

18.1 Describe the extent of complementarity between products supplied by the merger parties.

372 Not applicable.

18.2 Describe the extent to which the products identified above are, or could be, offered to customers as a product range through bundling or tying.

373 Not applicable.

18.3 Describe the competitive constraints that would, or would be likely to, prevent such bundling or tying from significantly foreclosing the ability of the merged entity's competitors to compete, including foreclosure of access to distribution by the merged entity's competitors.

374 Not applicable.

⁴⁰³ Pleatsikas, 142.

⁴⁰⁴ Pleatsikas, 146.

⁴⁰⁵ Scott, 199 – 200.



19 Detriment from a lessening of competition

Having regard to the information provided above, and any other relevant information, describe any detriment which would or would be likely to flow from a lessening of competition as a result of the acquisition.

- 375 The proposed acquisition of WCB by Murray Goulburn will not generate any meaningful lessening of competition in the market for the acquisition of raw milk, and will be efficiency enhancing relative to the counterfactual scenarios (as discussed below).⁴⁰⁶

20 Other public detriment

Describe any public detriment likely to result from the proposed acquisition that has not already been described above.

- 376 Not applicable.

21 Public benefit claims

21.1 Describe any public benefit in the form of increased efficiencies (for example, economies of scale or scope) which would, or would be likely to, result from the acquisition.

- 377 The proposed acquisition is likely to yield substantial increases in efficiencies across many aspects of the operations of the combined business. These efficiencies underpin the public benefits that Murray Goulburn considers will result from the proposed acquisition.
- 378 In the discussion below we outline Murray Goulburn's public benefit claims drawing upon the evidence submitted with this application as found in the statements of:
- (a) David Michael Noonan – calculation of operational and other synergies;
 - (b) Maldwyn Beniston – enhancements in international competitiveness and global sales;
 - (c) Robert Arthur Poole – milk supply;
 - (d) Keith Mentiplay – efficiencies in plant optimisation;
 - (e) Mark McDonald – efficiencies in transport and logistics (farm to plant);
 - (f) John Barnett – efficiencies in transport and logistics (plant to customer).
- 379 In summary, the likely public benefits arise from the combination of:
- (a) the substantial increase to the milk pool available to Murray Goulburn;
 - (b) securing substantial synergies and efficiency gains;
 - (c) enhancing the standing and competitiveness of Australia's dairy industry in global trade through the efficiencies that will strengthen Australia's largest dairy producer, Murray Goulburn;

⁴⁰⁶ Pleatsikas, 150.



- (d) the likely flow-on of benefits to Murray Goulburn in returns to farmers and multiplier effects in rural communities.

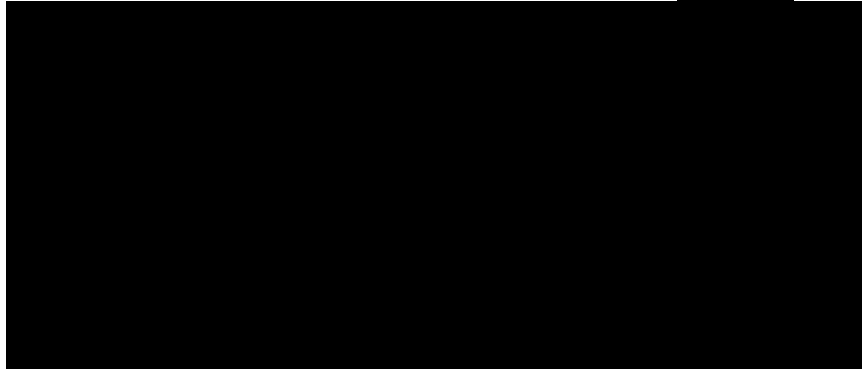
Increased milk pool

- 380 The proposed acquisition will result in an immediate increase of 800 million litres to Murray Goulburn's milk pool.
- 381 Increased milk volumes drive cost savings through the reduction of incremental costs. The increased milk pool will allow these cost savings to be realised. In respect of transport and logistics, for example, efficiency of milk collection is enhanced by economies of scale (ie greater volumes of milk). The additional 800 million litres of milk acquired would further increase efficiency of milk collection on a cents per litre basis.⁴⁰⁷
- 382 An increased milk pool also enables Murray Goulburn to upgrade its plants in future, as there will be a return on any raw milk processed. In this way, the proposed acquisition will allow Murray Goulburn to diversify its production capabilities for cheese, (as Murray Goulburn predominantly produces cheese in northern Victoria), and upgrade its existing facilities to produce more 'high value' ingredients products.⁴⁰⁸
- 383 As Murray Goulburn's domestic and export sales increase, farmers will earn greater returns through the co-operative structure and this will provide further incentives for increased milk supply.

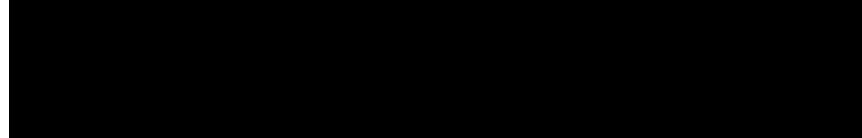
Operational synergies

- 384 **[Confidential: Murray Goulburn anticipates that there will be substantial synergies leading to annual savings arising from the combination of the Murray Goulburn and WCB businesses,]**
- (a) **[Confidential: Transport and logistics efficiencies:** there will be substantial savings flowing from improved efficiency in the transport operations. These will arise in the following areas:]

- (1) **[Confidential: Consolidation of milk pick-up routes –**



- (2) **[Confidential: Administration and transport personnel –**



⁴⁰⁷ McDonald, 54(c).

⁴⁰⁸ Mentiplay, 95(i); Noonan, 27(h).

⁴⁰⁹ Mentiplay, 95(a); Noonan, 27(a); McDonald 54(d).



[REDACTED]

(3) **[Confidential: Reduced transportation costs –** [REDACTED]

[REDACTED]

(4) **[Confidential: Reduced warehousing costs –** [REDACTED]

[REDACTED]

(5) **[Confidential: Increased efficiency in transportation of products.**

[REDACTED]

(6) **[Confidential: Increased use of efficient technology.**

[REDACTED]

(7) **[Confidential: Reduction of head count.**

[REDACTED]

⁴¹⁰ McDonald, 54(a) and 54(b).

⁴¹¹ Barnett, 59(a).

⁴¹² Barnett, 59(b).

⁴¹³ Barnett, 59(c).

⁴¹⁴ Barnett, 59(d).

⁴¹⁵ Barnett, 59(e).



- (b) **[Confidential: Consolidation of production** at certain plants | [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) **[Confidential: Sharing management and services** [REDACTED]
- (f) **Further roll-out of Murray Goulburn’s “Operation Excellence” program** – Murray Goulburn began implementing its “Operational Excellence” program in or about March 2013 in which a comprehensive review of plant and operational efficiency was undertaken and actioned. Given the likely infrastructure profile of WCB, Murray Goulburn anticipates that similar inefficiencies and problems are present in the Allansford Plant.⁴²⁰
- (g) **Procurement savings** – given the scale of Murray Goulburn compared with WCB, Murray Goulburn expects that there will be procurement synergies available by switching WCB’s purchases across to Murray Goulburn’s supply agreements likely at a lower cost.⁴²¹
- (h) **Efficiencies derived from increased volume** – the acquisition of WCB will result in an increase of 800 million litres to the milk pool. Increased milk volumes drive cost savings through the reduction of incremental costs. The increased milk pool will allow these cost savings to be realised. In respect of transport and logistics, for example, efficiency of milk collection is enhanced by economies of scale (ie greater volumes of milk). Therefore the additional 800 million litres of milk acquired from WCB would further increase efficiency of milk collection on a cents per litre basis. An increased milk pool also enables Murray Goulburn to upgrade its plants in future, as there will be a return on any raw milk processed. In this way, the WCB acquisition will allow Murray

⁴¹⁶ Noonan, 27(d); Mentiplay 95(b).

⁴¹⁷ Mentiplay, 95(c).

⁴¹⁸ Mentiplay, 95(d), Noonan, 27.

⁴¹⁹ Noonan, 27(e), Mentiplay, 95(e).

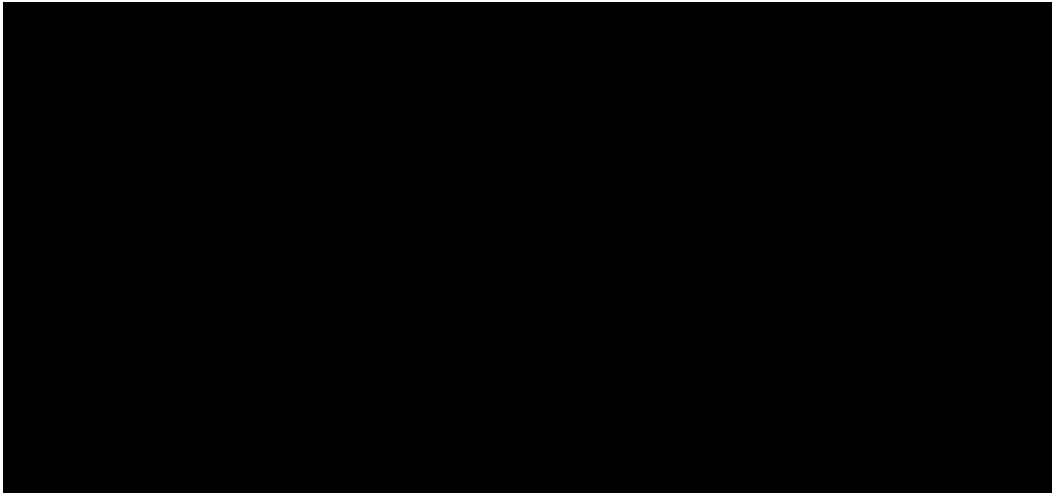
⁴²⁰ Noonan, 27(f), Mentiplay, 95(g).

⁴²¹ Mentiplay, 95(h); Noonan, 27(g)

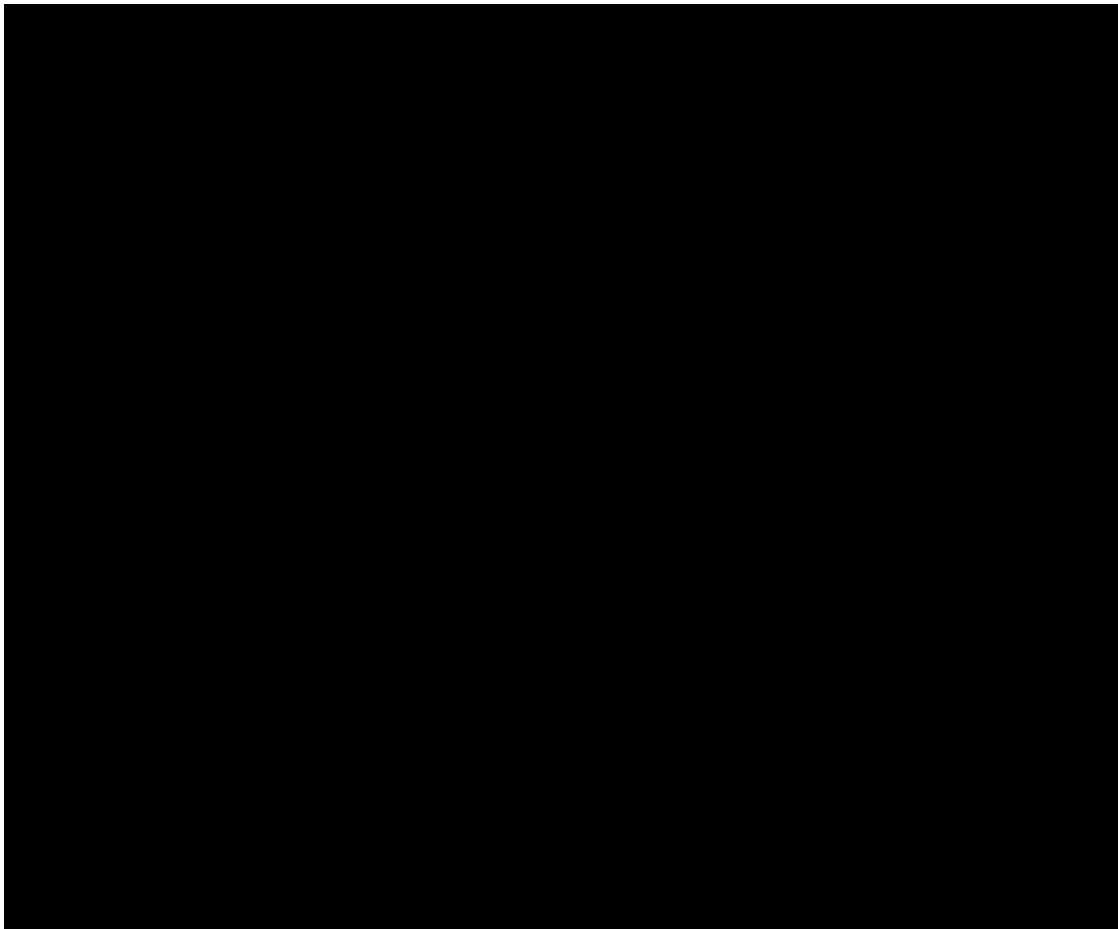


Goulburn to diversify its production capabilities for cheese, (as Murray Goulburn predominantly produces cheese in northern Victoria), and upgrade its existing facilities to produce more 'high value' ingredients products.⁴²²

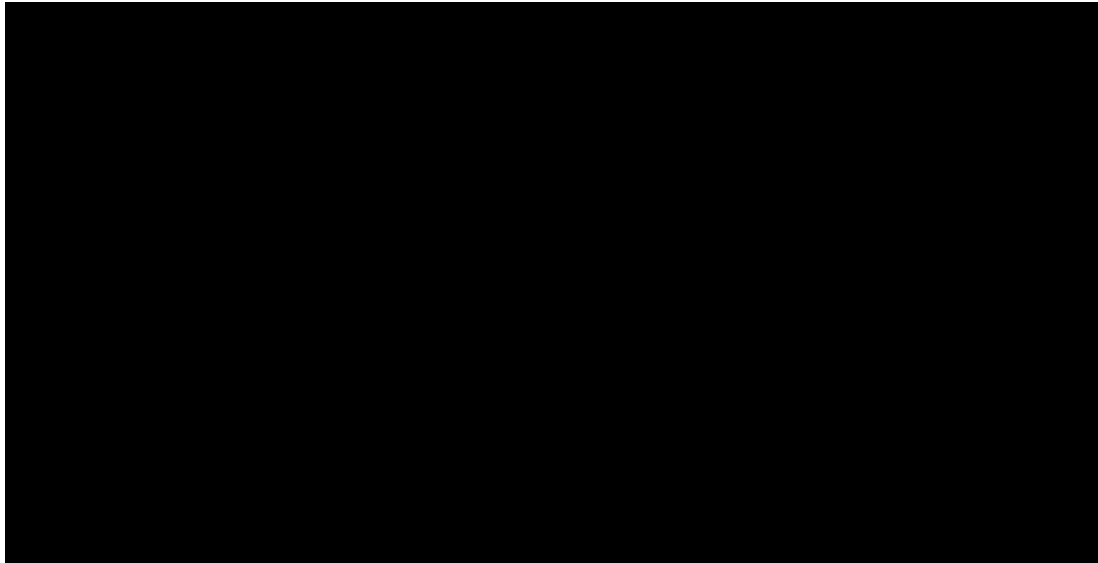
385 Murray Goulburn has estimated that the total synergies [REDACTED] [REDACTED] are as summarised below;



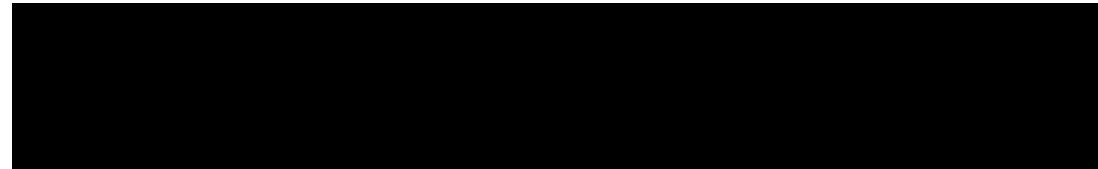
386 More specifically, these synergies are identified in the following categories.



⁴²² Mentiplay, 95(j); Noonan, 27(h).

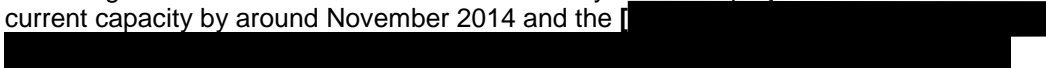


387

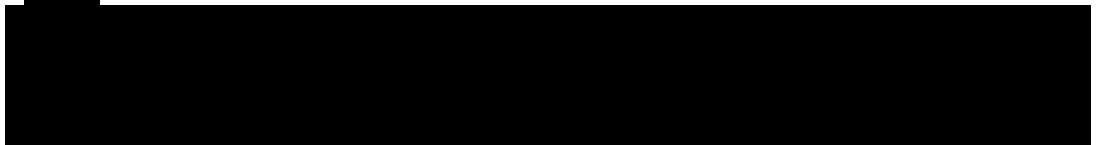


21.2 Describe whether the acquisition would, or would be likely to, result in a significant increase in the real value of exports.

388 Murray Goulburn has seen dramatic growth in the Nutritionals market and it anticipates that this growth will continue into the future. Murray Goulburn projects it will exceed its current capacity by around November 2014 and the [redacted]



389



390 The proposed acquisition will assist Murray Goulburn in leveraging its customer relationships to offer higher value products as well as allowing Murray Goulburn to fully take advantage of growth in the Nutritionals sector.

391 These strategies reduce Murray Goulburn's exposure to the price volatility in base commodity markets and increase the value that is obtained from each litre of milk that Murray Goulburn processes. Given Murray Goulburn's cooperative structure, these factors directly translate into a higher Farm-gate Price. This is a direct benefit to Murray Goulburn's suppliers and has a benefit to the Australian dairy industry as a whole.⁴²⁵

⁴²³ Poole, 244; Dairy Australia figures.

⁴²⁴ Beniston, 132-139.

⁴²⁵ Beniston, 142.



21.3 Describe whether the acquisition would, or would be likely to, result in significant substitution of domestic products for imported goods.

392 Imports have grown as domestic milk supply has fallen. Over time, the efficiencies and economies of scale available to Murray Goulburn through a merger with WCB will increase its domestic sales and reverse the fall in milk supply. This should lead to a significant substitution of domestic products for imported goods

21.4 Detail any public benefit claims relating to the international competitiveness of any Australian industry arising from the acquisition.

393 As a result of acquiring WCB, Murray Goulburn's international competitiveness will significantly improve. Specifically:

- (a) the acquisition will significantly increase Murray Goulburn's scale. International customers will perceive that Murray Goulburn is on a growth trajectory, which will [REDACTED]
- (b) with significantly increased milk volumes and scale, Murray Goulburn will have greater ability to diversify its production, which will assist in optimising its product mix and weathering dairy commodity price volatility; and
- (c) with significantly increased milk volumes and scale, Murray Goulburn will be able to leverage its existing relationships with premium customers to offer more innovative products.⁴²⁶

394 The increased milk pool available to the merged entity will underpin both enhanced scale in Murray Goulburn's operations and the production efficiency outlined above.

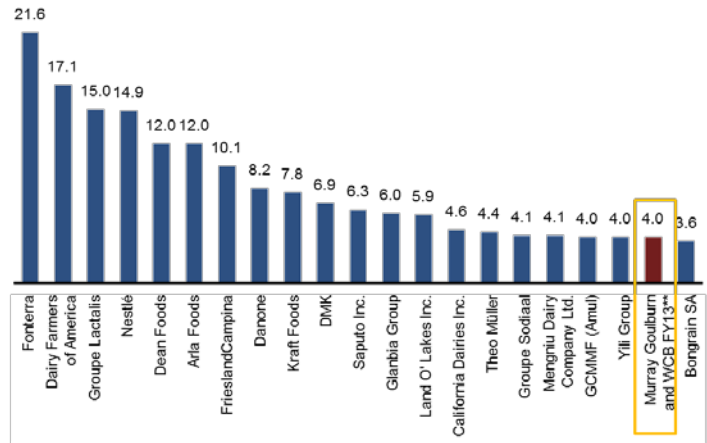
395 In turn, the enhanced scale and efficiency from the proposed acquisition will establish Murray Goulburn as a significant Australian export company. The merged entity will be the second largest supplier of dairy products on international markets (behind Fonterra). This creates benefits for Murray Goulburn, which flow through to the Australian dairy industry.⁴²⁷

⁴²⁶ Beniston, 118-126.

⁴²⁷ Beniston, 119.



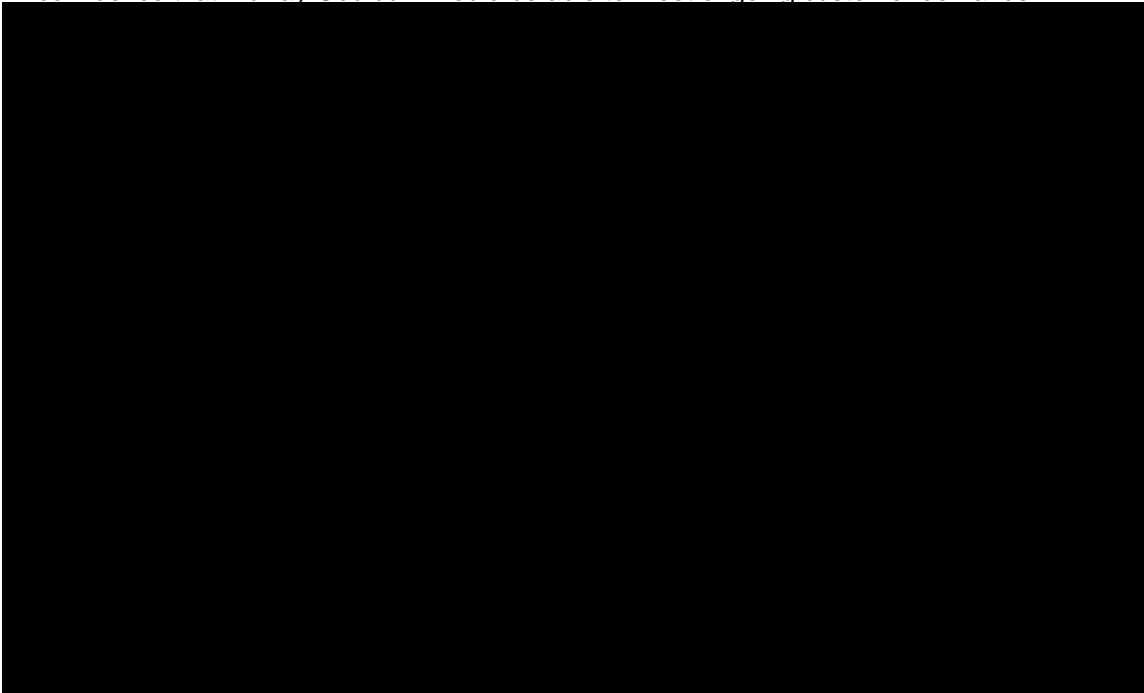
TOP GLOBAL DAIRY PROCESSORS RANKING BY MILK INTAKE*, 2012
Million tonnes



* Milk intake represents milk volume collected for main company and subsidiaries. Milk intake figures are in million tonnes, and in some cases recalculated from litre 1L = 1.033kg
 ** Murray Goulburn and Warrnambool Cheese and Butter FY13 milk supply
 Source: IFCN dairy reports; Murray Goulburn, Company Annual Reports

396

As shown in Confidential Figure 1 below, Murray Goulburn's export volumes have declined over the last 10 years as a result of the limited milk supply available to Murray Goulburn to service export markets. This has forced Murray Goulburn, particularly in recent times, to pull out of several markets. In particular, Murray Goulburn has reduced its footprint in the Middle East. It now only sells to high value or highly strategic clients. This decline in Murray Goulburn's ability to supply has coincided with an a sustained increase in demand for Ingredients products. In turn, this has undermined customer confidence that Murray Goulburn would be able to meet ongoing customer demands.⁴²⁸



⁴²⁸ Beniston, 92.



- 397 The increased access to milk volumes will serve to reverse the trend in recent years where global demand has grown but Murray Goulburn's exports have decreased and [REDACTED]⁴²⁹
- 398 Having the scale to grow with customers will not only restore confidence in Murray Goulburn's brand and enhance its international competitiveness, but it will have a flow on effect to the Australian dairy industry. Growing with Murray Goulburn's existing premium customer base will create confidence in upstream milk production and encourage investment in milk growth to further feed into the merged entity's clearly defined global strategy.
- 399 As a result of acquiring WCB, Murray Goulburn's increased milk volumes will enable it to produce a greater proportion of its volume as higher value dairy ingredients, as opposed to base dairy commodities. This will significantly increase Murray Goulburn's profitability.⁴³⁰ For example:
- (a) [REDACTED]
- (b) [REDACTED]
- 400 Further, significant volumes of WCB's existing milk supply will be able to be re-allocated to higher value production or achieve a higher premium in international markets under Murray Goulburn's ownership, because:
- (a) WCB's main dairy product export is currently bulk cheddar cheese, which is a base commodity ingredient, and other exports include skim milk powders, whey protein concentrate and cream cheese; and
- (b) WCB currently allocates a large portion of its export milk supply into the production of commodity cheddar;
- (c) WCB is unlikely to be achieving price premiums through the sale of this product, particularly given that it is a 'weak seller' in the Japanese market;⁴³² and (c) Murray Goulburn would be able to allocate the milk supply to premium achieving product streams, including nutritional product streams. [REDACTED]⁴³³
- 401 As a result of acquiring WCB, Murray Goulburn's increased milk volumes will enable it to supply increased demand in Asia for nutritional products and derive greater value than WCB is able to achieve, because:
- (a) WCB currently lacks the strong customer pull through and plant capabilities to operate as a successful nutritional producer and supplier;
- (b) by contrast, Murray Goulburn has existing customer relationships with three large nutritional customers; and
- (c) [REDACTED]

⁴²⁹ Beniston, 118, 120.

⁴³⁰ Beniston, 127-131.

⁴³¹ Beniston, 129.

⁴³² Beniston, 99.

⁴³³ Beniston, 123.

⁴³⁴ Beniston, 135.



402

[REDACTED]

21.5 Detail any other public benefit claims.

403 Because of Murray Goulburn's cooperative structure, and approach to setting its farmgate milk price, the increased profitability that Murray Goulburn is likely to achieve as a result of the merger with WCB will lead to Murray Goulburn offering significantly higher milk prices to its farmer suppliers than it otherwise would have.⁴³⁶

404 Higher farmgate milk prices, and a more internationally competitive Murray Goulburn, are likely to substantially improve dairy farmer confidence, and encourage Australian dairy farmers to increase their production of raw milk.⁴³⁷

405 Increased raw milk production would lead to Murray Goulburn increasing its acquisition of raw milk, with increased dairy ingredient production and further increase exports.

406

[REDACTED]

407 The increase in milk price will be received by all suppliers to the combined entity, including potentially all 500 current suppliers to WCB. In total this will affect approximately 3,000 suppliers. Further, it is possible that an increase in milk price will likely be spent by suppliers in the regional areas where they operate, providing a benefit to the economies of those regions.

408 The co-operative principles on which a merged Murray Goulburn/WCB merged entity will operate, also ensure that the increased earnings of the merged entity from growth opportunities, including exports, will ultimately benefit suppliers through further sustained and increased farmgate prices and dividends.⁴³⁹

409 As a cooperative,:

- (a) the dairy farmers who supply milk to Murray Goulburn also control the company and select the Board;
- (b) the Board acts in the interests of the suppliers and seeks to maximise returns to suppliers;
- (c) management and the Board consult with suppliers and the suppliers have access to them;
- (d) suppliers are supported by Murray Goulburn through services to assist and improve supplier milk product and reduce costs; and
- (e) the distribution of milk proceeds, dividends, incentives and charges is done as fairly as possible taking into account wherever possible, real benefits or costs incurred in the business.⁴⁴⁰

410 In addition, the opportunities for increased production of raw milk (stimulated by higher prices for raw milk) and higher production of exports and increased production of higher margin products could result in a significant increase in dairy farming and dairy

⁴³⁵ Beniston, 129.

⁴³⁶ Beniston, 142.

⁴³⁷ Phillips, 221 and 227

⁴³⁸ Beniston, 139; MB2.

⁴³⁹ Poole, 246.

⁴⁴⁰ Poole, 10.



processing economic activity. To the extent this is true, there will also be a multiplier effect that will increase both employment and income, particularly within Victoria and South Australia. An appropriate economic impact multipliers for dairy farming/agricultural activity indicates that an increase of \$1 in economic activity in the primary sectors (i.e., dairy farming and dairy processing) will result in a total increase in economic activity of approximately \$2-\$3.207.

22 The counterfactual

Describe the likely state of the relevant market(s) in the future if the proposed acquisition does not take place, giving reasons.

Overview of the possible counterfactual scenarios

- 411 In addition to Murray Goulburn's takeover bid for WCB:
- (a) Bega has launched a takeover bid for WCB, and its offer is currently \$2 per share plus 1.5 Bega shares, which values the bid at approximately \$8.68 per share; and
 - (b) Saputo has launched a takeover bid for WCB, and its offer is currently \$9 per share.
- 412 If Murray Goulburn does not acquire WCB, it is possible that:
- (a) The status quo will continue, with WCB continuing to operate as an independent business;
 - (b) Bega will acquire WCB; or
 - (c) Saputo will acquire WCB.

Counterfactual acquisition by Bega

- 413 If Bega were to acquire WCB, its total annual raw milk acquisition would increase from approximately 641 million litres to approximately 1.5 billion litres.⁴⁴¹
- 414 Through increased milk supply, and the possible closure and consolidation of production of Bega's existing Coburg plant to WCB's Allansford plant, Bega may be able to derive some cost savings.⁴⁴²
- 415 Any cost savings that Bega would derive would be substantially lower than the cost savings that Murray Goulburn expects to achieve, because unlike Murray Goulburn, Bega lacks any significant geographic overlap with WCB in terms of processing plants and milk collection.⁴⁴³
- 416 Although Bega has nutritional product capability⁴⁴⁴, which is relevant to taking advantage of growing demand in Asia, Bega has no international in-market sales capability. The combined Bega / WCB would only have one office in Asia (in Japan).⁴⁴⁵ Bega lacks the

⁴⁴¹ Mentiplay, 96.

⁴⁴² Mentiplay, 97(a).

⁴⁴³ Mentiplay, 98; McDonald, 56, 57; Barnett, 62.

⁴⁴⁴ Beniston, 150.

⁴⁴⁵ Beniston, 100.



relevant experience and client base to be able to fully service and win international clients.⁴⁴⁶

Counterfactual acquisition by Saputo

- 417 Saputo currently has no dairy processing or milk collection presence in Australia, and would be unlikely to achieve any cost savings by acquiring WCB.⁴⁴⁷
- 418 Saputo does not currently produce finished nutritional products, and WCB's nutritional capability and customer relationships are not strong (see assumption 237 above). As a consequence, the combined business is unlikely be able to successfully take advantage of growing nutritional demand in Asia.⁴⁴⁸
- 419 Saputo would derive little synergies in respect of supplying dairy ingredients in international markets. At most, it may be able to supplement its current whey product offering into Asia with whey products produced at WCB's Allansford plant.⁴⁴⁹
- 420 Saputo has limited international in-market sales capability, with only one international sales office in Asia (Hong Kong), and another sales office in Brazil.⁴⁵⁰ The combined Saputo / WCB would only have two offices in Asia (in Hong Kong and Japan).

23 Joint ventures

Does this application for authorisation deal with a matter relating to a joint venture (see section 4J of the Act)?

- 421 No.
- (a) **If so, are there any other applications for clearance or authorisation under Part VII of the Act being made simultaneously with this application in relation to the joint venture.**
- 422 Not applicable.
- (b) **If so, describe the nature of the applications and who is making those other applications.**
- 423 Not applicable.

24 International

- (a) **Does the acquisition involve:**
- (1) **A company operating in Australia that has a foreign parent?**
- 424 No.
- (1) **Australian businesses or consumers affected by conduct occurring overseas?**

⁴⁴⁶ Beniston, 151.

⁴⁴⁷ Mentiplay, 100; McDonald, 58; Barnett, 63.

⁴⁴⁸ Beniston, 149.

⁴⁴⁹ Beniston, 149.

⁴⁵⁰ Beniston, 104.



425 No (except to the extent that imports or exports are relevant, as discussed in sections 11 and 12 above).

(1) **Foreign consumers affected by conduct occurring in Australia?**

426 No (except to the extent that imports or exports are relevant, as discussed in sections 11 and 12 above).

(1) **Conduct occurring across international boundaries?**

427 No (except to the extent that imports or exports are relevant, as discussed in sections 11 and 12 above).

(a) **Provide details of competition authorities in jurisdictions other than Australia to which the proposed acquisition has been, or is intended to be, notified and the timing of such notifications.**

428 Not applicable.

25 Period of authorisation

Outline the period for which authorisation is sought, detailing reasons why authorisation should be granted for the requested period.

429 Not applicable.

26 Undertaking

Consistent with subsection 95AV (2) of the Act, the Applicant is required, pursuant to the regulations, to give an undertaking to the Commission under section 87B of the Act that the acquisition will not be made while the application for authorisation is being considered by the Tribunal. An undertaking which is in a form that must be offered to the Commission is attached to this Form.

430 See attached.

27 Further information

Name, postal address, telephone, facsimile and email contact details of person authorised by the notifying parties to provide additional information in relation to this application.

431 Herbert Smith Freehills
101 Collins Street
Melbourne Victoria 3000

Attention: Chris Jose
Direct telephone: +61 3 9288 1416
Mobile telephone: +61 411 514 487
Fax: +613 9288 1567
Email: Chris.Jose@hsf.com

This ^{29th} day of November 2013

Competition and Consumer Act 2010

**Undertaking to the Australian Competition and Consumer
Commission given for the purposes of section 87B**

by

**Murray Goulburn Co-operative Co. Limited
(ACN 004 277 089)**

1. This undertaking (**Undertaking**) is given to the Australian Competition and Consumer Commission (**Commission**) by Murray Goulburn Co-operative Co. Limited (**Murray Goulburn**) (ACN 004 277 089) of Freshwater Place, Level 15, Southbank Boulevard, Southbank, Victoria 3000 under section 87B of the *Competition and Consumer Act 2010 (Act)*.
2. Murray Goulburn has made an application for authorisation in respect of an acquisition pursuant to section 95AU of the Act.
3. Murray Goulburn hereby undertakes that it will not make the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the Australian Competition Tribunal.
4. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Murray Goulburn; and
 - (b) the Commission accepts the Undertaking so executed.
5. Murray Goulburn acknowledges that the Commission will make this Undertaking available for public inspection.

EXECUTED BY

Murray Goulburn Co-operative Co. Limited (ACN 004 277 089)
pursuant to section 127(1) of the *Corporations Act 2001*.

sign here ►

office held

Managing Director

Company Secretary and General Counsel

print name

Gary Helou

Fiona Smith

This ^{29th} day of November 2013.

ACCEPTED BY THE COMMISSION PURSUANT TO SECTION 87B OF THE ACT

.....
Commission Chairperson