Statement of Issues

16 May 2024

Louis Dreyfus Company Asia Pte. Ltd. – proposed acquisition of Namoi Cotton Limited

Purpose

1. Louis Dreyfus Company Asia Pte. Ltd (**LDC**) proposes to acquire Namoi Cotton Limited (**Namoi**) (the **proposed acquisition**).

2. This Statement of Issues:

    - gives the Australian Competition and Consumer Commission's (**ACCC**) preliminary views on competition issues arising from the proposed acquisition
    - identifies areas of further inquiry
    - outlines a proposed s87B undertaking from LDC
    - invites interested parties to submit comments and information to assist our assessment of the issues and the proposed s87B undertaking.

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

Overview of ACCC's preliminary views

4. In considering the proposed acquisition, the ACCC applies the legal test set out in section 50 of the *Competition and Consumer Act 2010* (the **CCA**). In general terms, section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.

5. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. In this Statement of Issues there are two 'issues of concern' and two 'issues that may raise concerns'.

Issues of concern

- The ACCC is concerned about a loss in competition for the supply of ginning services to growers in the north of Western Australia and Northern Territory, given that LDC will be involved in the management and operation of both gins in this region.

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

Issues that may raise concerns

- The ACCC is concerned that the proposed acquisition may provide LDC with the ability and incentive to leverage LDC's position in cotton ginning to foreclose or frustrate competing cotton lint and/or seed merchants. LDC may subsequently be able to reduce the price it pays to growers for cotton lint and/or seed.

- The ACCC is concerned that the proposed acquisition may result in LDC having the ability to foreclose third-party access to its warehousing services for the export of cotton out of the Port of Brisbane. This may have the effect of substantially lessening competition in the acquisition of cotton lint, given that warehousing services are a critical input to competing cotton merchants.

Issues unlikely to raise concerns

6. The ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition in the supply of ginning services in regional areas in NSW and Queensland because post-acquisition, LDC would be constrained by other suppliers of ginning services.

Making a submission

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

   - the likelihood the proposed acquisition would result in a reduction in competition for growers seeking ginning services in the north of Western Australia and Northern Territory region

   - the likelihood the proposed acquisition would result in higher prices or reduced quality for cotton lint classing services in Australia

   - the likelihood the proposed acquisition would provide LDC with the ability and incentive to leverage its position in ginning to anti-competitively foreclose rival merchants' access to cotton lint and/or seed, and

- the likelihood the proposed acquisition would enable LDC to foreclose access to its warehousing services or raise prices for its warehousing services for the export of cotton out of the Port of Brisbane.

8. The ACCC is also seeking views on a proposed s87B undertaking offered by LDC. Further information on the proposed undertaking can be found at the end of this document.

9. Interested parties should provide submissions by 5pm on 30 May 2024. Responses may be emailed to mergers@accc.gov.au with the title: *Submission re: LDC's proposed acquisition of Namoi*.

10. The ACCC anticipates making a final decision on 11 July 2024, however, this timeline can change. To keep up with possible timing changes and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at www.accc.gov.au/publicregisters/mergers-registers/public-informal-merger-reviews.

Confidentiality of submissions

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

About ACCC 'Statements of Issues'

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

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

The parties

LDC

14. LDC is incorporated in Singapore and is part of the Louis Dreyfus Company Group – a global merchant and processor of agricultural goods. In Australia, it operates in the origination, ginning, classing, storage, and trading of cotton lint and cottonseed, grains and oilseeds.

15. LDC operates 3 cotton gins located in Emerald and Dalby (Queensland) and Moree (NSW). It supplies cotton warehousing and logistics services with facilities in Dalby and at the Port of Brisbane (Queensland) and in Moree (NSW).

16. LDC holds a 20 per cent interest in ProClass, which supplies cotton lint classing services. It also has a joint venture with WANT Cotton for the operation and management of the WANT gin located near Katherine (NT) (the **Katherine gin**). The ACCC understands the gin has recently become operational.

Namoi

17. Namoi is an ASX-listed company with its business comprising ginning, cotton lint classing through its ownership of Australian Classing Services Pty Ltd (**ACS**), cottonseed and cotton lint marketing as well as warehousing and logistics services.

18. Namoi operates 10 cotton gins at 9 sites across NSW and Queensland. Namoi is also involved in a joint venture with Sundown Pastoral Co Pty Ltd (called the Wathagar Ginning Company) with a gin located in the Gwydir Valley (NSW).

19. It has a ~17 per cent interest in the Kimberley Cotton Company (**KCC**), which will operate a multiuser cotton gin in Kununurra (WA) (the **Kununurra gin**). The gin's construction is due to be completed in July 2025.

LDC and Namoi joint ventures

20. LDC has 2 joint venture arrangements in place with Namoi – the Namoi Cotton Alliance (the **NCA**) and the Namoi Cotton Marketing Alliance (the **NCMA**).

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

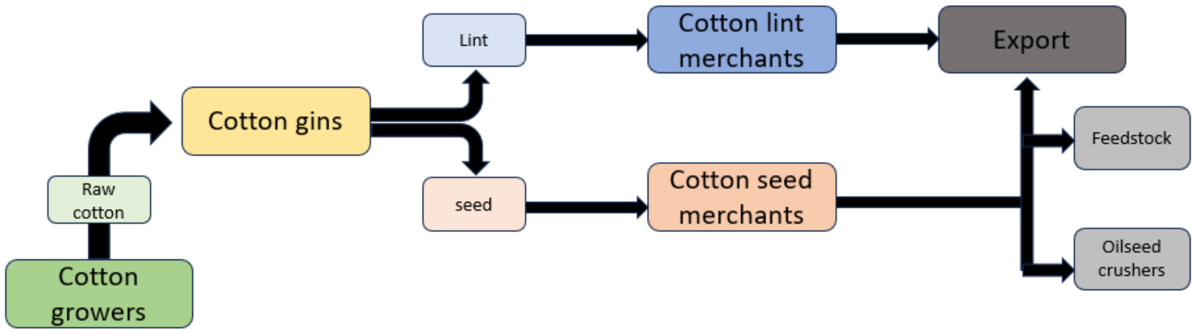
22. The NCMA (of which LDC holds an 85 per cent interest, with Namoi holding the remaining 15 per cent) is involved in the trading and marketing of cotton lint. Namoi exclusively supplies all cotton lint bales acquired by it to the NCMA and the NCMA exclusively supplies its services to Namoi.

Industry background

Australian cotton production and supply chain

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

Figure 1: Basic cotton supply chain in Australia



24. As shown above cotton is ginned, then the lint and seed are sold to merchants for use domestically or for export. There are approximately 14 cotton merchants currently operating in Australia, many of which, are vertically integrated, including:

- LDC and Namoi
- Australian Food and Fibre (**AFF**) – which supplies ginning services, cotton lint classing services, warehousing and acquires and markets cotton lint and cottonseed
- Brighann – which supplies ginning services, warehousing and acquires and markets cotton lint and cottonseed, and
- Olam (Queensland Cotton) – which supplies ginning services, cotton lint classing services (through a 20 per cent share in ProClass), warehousing and acquires and markets cotton lint and cottonseed.

Cotton growing and transportation

25. Cotton is grown in NSW, Queensland and more recently, in the north of Western Australia and Northern Territory.[1] There are around 1500 cotton farms in Australia,[2] ranging from large corporations to small individual farmers. Due to variable weather conditions, cotton production figures in Australia change, ranging from 0.5 million bales to 6 million bales per annum. In the 2023/24 season the vast majority of cotton was grown in NSW (337,000 ha) and

[1] Map of Cotton Gins in Australia is included as **Annexure A**.
[2] Cotton Australia, Industry Overview, accessed 2 May 2024, https://cottonaustralia.com.au/industry-overview#:~:text=than%2012%2C000%20people.-,Farms,Australia%20and%20the%20Northern%20Territory.

Queensland (122,000 ha), with only a very small crop in Western Australia (2,500 ha).

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

Cotton ginning

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

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

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

- gross ginning contracts – the grower pays for the ginning services and retains title to the cotton lint and cotton seed

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

- gin for seed and lint contracts – the price of cotton lint and cottonseed is offset against the cost of ginning services.

Cotton lint classing

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

Acquisition and marketing of cotton lint and cottonseed

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

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

Warehousing and export

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

34. The key export channels for cotton are:

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

35. Market feedback is that the Port of Darwin will likely be a future export channel for cotton grown in the north of Western Australia and Northern Territory.

The proposed transaction

36. LDC proposes to acquire Namoi by way of an off-market takeover bid. LDC already holds a ~17 per cent shareholding in Namoi.

Future with and without the acquisition

37. In assessing a proposed acquisition under section 50 of the CCA, the ACCC considers the effects of the acquisition by comparing the likely future state of competition if the acquisition proceeds (the 'with' position) to the likely future state of competition if the acquisition does not proceed (the 'without' position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.

38. On the basis of the information currently available, the ACCC considers that absent the proposed acquisition Namoi will continue to operate its business.

Previous ACCC decisions

LDC's acquisition of certain stock and assets of Namoi

39. On 13 March 2013, the ACCC decided not to oppose LDC's acquisition of 13 per cent of the capital stock in Namoi and a 49 per cent interest in Namoi's cotton marketing, packing and warehouse and logistics services business. The ACCC concluded the acquisition was unlikely to substantially lessen competition in:

- the national market for the acquisition of cotton lint and the global market for the sale of cotton lint

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

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

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

Market definition

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

43. LDC and Namoi overlap in the supply of ginning services, cotton lint classing services, logistics and warehousing services, and the acquisition and marketing of cotton lint and cotton seed.

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

    - a regional market for the supply of ginning services to growers in the north of Western Australia and Northern Territory
    - the supply of cotton lint classing services in Australia
    - the supply of warehousing for cotton to be exported out of the Port of Brisbane, and
    - national markets for the acquisition and marketing of cotton lint and cotton seed.

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

- the relevant geographic dimension of the market for the supply of ginning services in the north of Western Australia and Northern Territory, and
- the relevant geographic dimension of the market for the supply of warehousing services for cotton.

Issue of concern: LDC's ability to raise prices in the supply of ginning services in the north of Western Australia and the Northern Territory region

45. The ACCC's preliminary view is that that the proposed acquisition is likely to substantially lessen competition in the supply of ginning services to growers in the north of Western Australia and Northern Territory region. The ACCC has concerns that post-acquisition LDC's interests in both the Katherine and Kununurra gins may give rise to competition concerns for growers in circumstances where:

- when operational, the two gins will be the closest geographic competitors for growers located in the north of Western Australia and the Northern Territory
- LDC's interests in both gins as an operator, along with its minority equity interest in the Kununurra gin, could lead to a lessening of incentives for competition for customers, and
- barriers to entry are likely to be high.

Alternative suppliers of ginning services in the north of Western Australia and the Northern Territory region

46. Growers in the Katherine and Kununurra growing regions currently transport their raw cotton approximately 3,000km to gins in Queensland, due to a lack of operational gins in their growing regions. Market feedback indicates that the closest of these gins are located in Dalby and Emerald. LDC owns and operates one of the two gins in Emerald, and one of the three gins in Dalby.

47. Once the Katherine and Kununurra gins are operational, these gins will be by far the closest choice for growers in the region. Therefore, despite the fact that the gins themselves will be approximately 500km apart, due to the regions' isolation from Queensland, the ACCC considers the gins in Katherine and Kununurra are likely to be each other's closest competitors.

48. The ACCC does note that bio-security rules currently prevent the transport of raw cotton from the Northern Territory to Western Australia. Therefore, competition between the two gins is likely to be asymmetric in that Northern Territory growers will not be able to access the Kununurra gin. However, West Australian growers will be able to utilise the Katherine gin and market feedback suggests that they are exploring the ability to do so already.

49. Market feedback at this stage also indicates that the Port of Darwin is likely to be used as the main export port for cotton lint coming out of the Katherine and Kununurra gins. In order to export through this port, cotton originating from the Kununurra growing region will have to pass through Katherine (due to the road network) on the way to port, which increases the likelihood that Kununurra growers will see the Katherine gin as an alternative supplier of ginning services.

50. The ACCC is concerned that post-acquisition, given its interest in both gins, and the fact that some of the next closest gins in Queensland are also operated by

LDC, LDC would be able to significantly reduce competition for ginning services which could result in higher prices for growers.

LDC's interests raise competition concerns

51. Post-acquisition LDC would hold a ~17 per cent shareholding in KCC, the company owning the Kununurra gin and will also be responsible for operating the gin. In Katherine, LDC has a joint venture agreement in place for the operation of the gin in conjunction with WANT Cotton.

52. Through these interests, the ACCC is concerned that LDC may be able to influence the competitive dynamics for the supply of ginning services to growers in the region. The ACCC will continue to explore the extent of influence LDC may be able to exert post-acquisition.

Barriers to entry are high

53. The ACCC considers that despite the recent plans for the entry of new gins, barriers to entry in the short to medium term are likely to be high. Gins are specialised infrastructure and require significant time, capital and expertise to establish. Market feedback indicates that the cost of a new gin could be as much as $80 million.

54. As the industry in the north of Western Australia and the Northern Territory is fledgling, market feedback indicates it would be unlikely that there will be sufficient supply of cotton and thus sufficient demand for the entry of a new gin in the north of Western Australia and the Northern Territory region in the short to medium term. Market feedback indicates the gins at Katherine and Kununurra are likely to reach capacity when they are processing approximately 250,000 bales per ginning period. Cotton production forecasts for the region indicate that there will be insufficient cotton grown to exceed the capacity of two gins in the region in the foreseeable future. Therefore, the ACCC considers that the likelihood of new entry is low.

The ACCC invites comments from market participants on its concerns in relation to the supply of ginning services in the north of Western Australia and Northern Territory region. In particular, market participants may wish to comment on the following:

- the extent to which the Katherine and Kununurra gins will compete for customers from WA and NT
- whether the interests held by LDC relating to the ginning operations are likely to raise concerns because of the potential for reduced competitive tension between the two gins, and
- the height of barriers to entry and likelihood of new entry in supplying cotton ginning services to growers in the north of Western Australia and Northern Territory region.

Issue of concern: LDC's ability to raise prices in the supply of cotton lint classing services in Australia

55. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the supply of cotton lint classing services in Australia. The ACCC has concerns that post-acquisition the overlapping ownership of ProClass and ACS may give rise to competition concerns for customers because:

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

There is limited competition from alternative suppliers

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

57. Market feedback is that there is only one alternative supplier of cotton lint classing services in Australia outside of ProClass and ACS, being AFF. However, this same feedback also indicates the classing services operated by AFF is generally used to class its own cotton lint, and is not available to third parties. Therefore, the ACCC considers that the competitive constraint from AFF would be limited.

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

59. Despite the fact that LDC's interest in ProClass would be a minority interest, the ACCC is concerned that the cross-shareholdings between ProClass and ACS have the potential to reduce competition. At present, with ACS being wholly owned by Namoi, it is constrained from raising prices or reducing service quality through the risk of customers switching to ProClass. Post-acquisition, the constraint would be lowered, as if ACS raises prices LDC would capture at least some of the lost profits of lost customers through its shareholding in ProClass.

60. In addition, the ACCC is concerned that the cross shareholdings will increase the risk of coordination between the two suppliers, which could lead to increased prices, or a reduction in the quality of the services provided. Some market participants are particularly concerned about the potential for the removal of visual classing from the industry, which some growers have indicated is

valuable. The ACCC is continuing to explore in detail the extent of control or influence LDC could exercise on ProClass post-acquisition.

Barriers to entry are high

61. Barriers to entry in the classing market are likely to be high and the possibility of new entry low. The cost of starting a classing business is significant, with HVI machines (which complete machine classing) cost approximately $400,000. Market feedback is that cotton lint classing is a high volume, low margin product, with classers currently charging $2-3 per bale. Market feedback is that existing customer relationships and reliability in the classing service provided are important to acquiring and maintaining market share. Accordingly, given the relative size of incumbents Proclass and ACS, the ACCC considers that entry would be unlikely given the difficulties a new entrant would face in achieving profitability.

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

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

Issue that may raise concerns: LDC's ability and incentive to foreclose rival merchants' access to cotton lint

62. The ACCC's preliminary view is that the proposed acquisition may provide LDC with the ability and incentive to foreclose or frustrate competing cotton merchants' access to cotton lint and seed, substantially lessening competition in these markets.

63. Ginned cotton lint and seed is an important input for merchants who need to acquire it in order to fill downstream orders from users. Competition between merchants is important to the prices paid to growers in Australia for their cotton. The ACCC is concerned that a substantial lessening of competition in the supply of cotton lint merchant services, as a result of foreclosure or frustration, could result in lower prices paid to growers for their cotton lint and seed.

64. The proposed acquisition will significantly increase LDC's presence in cotton ginning in Australia, and combined with the horizontal aggregation in the north of Western Australia and Northern Territory region, the aggregation on the east coast adds to the ability of LDC to implement any tying foreclosure strategy. LDC will move from owning and operating three gins, to a total of thirteen gins across Queensland and New South Wales (excluding the Kununurra and Katherine gins), increasing its total share of ginning volume in Australia to approximately 30 per cent. The proposed acquisition will mean that LDC becomes one of the largest

ginners in Australia, and combined with its already significant presence in cotton lint and seed marketing (both in Australia and internationally) may provide LDC with both the ability and incentive to foreclose competing merchants' access to cotton lint and seed.

65. The ACCC has heard concerns that the operation of gins is an important pathway to securing cotton lint and seed for trading.

66. Market participants submit that ginners have increased visibility of cotton contracts, as growers must provide the gin with details of who it has sold its cotton lint to, so that it can be set aside post ginning for the correct merchant to collect it. These market participants submit that this provides the gin with superior visibility over which cotton lint remains uncontracted, and where certain cotton growers lint is being sold over time. As a ginner's market share increases, the volume and depth of this information increases. Some market participants consider that this gives integrated ginners important information to target and sell their services, which is not available to other competitors.

67. Market participants have also pointed to the ability of vertically integrated operators to provide packaged ginning and merchant offers to growers to secure their business. These market participants are concerned that post acquisition, as LDC increases its presence in ginning, it will be able to tie the provision of ginning and merchant contracts to one another and prevent non-integrated merchants competing for cotton lint and seed processed at what are currently Namoi's gins.

68. In addition to concern about tying strategies, market feedback also suggests frustration could occur by LDC raising the price or worsening the quality of ginning services for rival merchants. As a result, rival merchants may need to pass the higher quality-adjusted cost of ginning service at LDC gins onto cotton growers in the form of lower prices for cotton lint.

69. The ACCC notes that many market participants have submitted that at present contracts for ginning cotton and the downstream merchanting of lint and seed are typically separate agreements. However, the ACCC is concerned that the proposed acquisition would lead to a significant change in market structure, such that the three largest ginners in Australia in LDC, AFF and Olam would be fully vertically integrated, which may in turn lead to an incentive to alter the way in which contracts for ginning and merchanting are negotiated and increase the likelihood of frustration or foreclosure of non-integrated merchants.

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

- the likelihood that LDC could implement tying strategies forcing growers to acquire both ginning and marketing services from it
- contracting dynamics for cotton ginning services and the sale of cotton lint from growers to merchants, and
- the importance of cotton ginned at Namoi gins as a source of cotton lint for non-integrated cotton merchants.

Issue that may raise concerns: LDC's ability to foreclose access to or increase prices for warehousing services for the export of cotton out of the Port of Brisbane

70. The ACCC's preliminary view is that the proposed acquisition may result in LDC having the ability to foreclose third-party access to its warehousing services for the export of cotton out of the Port of Brisbane. This may have the effect of substantially lessening competition in the supply of cotton lint merchant services, given that warehousing services are a critical input to competing in this market. As a result, growers may receive lower prices for their cotton lint.

71. As a result of the acquisition LDC will acquire Namoi's existing warehousing and logistics network for the export of cotton out of the Port of Brisbane. Post-acquisition, LDC will control at least 30 per cent of the warehouse storage facilities for the export of cotton out of the Port of Brisbane. The ACCC is concerned that post-acquisition, LDC may refuse to supply available warehousing capacity or raise the price of warehousing to third party merchants. Both outcomes would either inhibit the ability or increase the cost to merchants of acquiring cotton lint from growers.

72. The ACCC has received mixed feedback regarding barriers to entry for warehousing. Some market participants have pointed to the significant capital outlay required to establish warehousing, and noted that it is likely prohibitive. However, other participants have indicated that warehouses used for cotton bales prior to export are not specialised and can likely be acquired with minimal capital outlay. The ACCC has also heard that cotton lint can also be stored for long periods without issue, and that the particular warehouse location is not critical (i.e. the warehouse does not need to be at the Port of Brisbane).

73. The ACCC will continue to consider the importance of NCA's existing warehousing services to the industry and the likelihood that third parties can develop their own warehousing for the export of cotton out of the Port of Brisbane. The ACCC will also continue to consider barriers to entry including the availability of land at/near the Port of Brisbane and for upcountry sites, access to major road and rail corridors to port, as well any strategic barriers to entry associated with incumbency advantage.

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

- the availability of other third-party warehousing services for cotton merchants (i) at or near the Port of Brisbane, and (ii) up-country in the Port of Brisbane cotton export supply chain
- the likely revenues expected from operating warehousing assets, particularly for the Port of Brisbane

- the height of barriers to entry to self-supply warehousing and related logistic services (i) at or near the Port of Brisbane, and (ii) up-country in the Port of Brisbane cotton export supply chain
- the availability of suitable land at or near the Port of Brisbane with access to major road and rail corridors to the Port of Brisbane from up-country sites
- the advantages and disadvantages for cotton merchants of filling export shipments from warehousing services at or near the relevant port as opposed to up-country warehouses, particularly for the Port of Brisbane, and
- the ability to recoup investment costs on new warehousing services for cotton and the ability for incumbent suppliers to price strategically in response to new entry.

Proposed s87B undertaking

74. LDC has initiated discussions with the ACCC regarding a proposed undertaking pursuant to section 87B of the Act. LDC considers this proposed s87B undertaking addresses the competition concerns raised during the ACCC's initial market inquiries.

75. The ACCC has not formed a view as to whether any competition concerns are capable of being addressed by the proposed s87B undertaking. The ACCC will not accept an undertaking if it is not satisfied that it will address the ACCC's competition concerns.

76. LDC proposes to offer a court enforceable undertaking to the ACCC to address the ACCC's competition concerns with respect to the supply of classing services in Australia and the supply of ginning services in north-western Australia. The proposal includes LDC commitments to:

    - divest of its shareholding in Proclass
    - the termination of the WANT Agreement

    (the **Proposed Divestment**)

77. A public submission by LDC regarding the Proposed Divestment is included at **Annexure B**. The ACCC has summarised some key features of the Proposed Divestment below but market participants should also have regard to LDC's Submission.

Proclass

78. LDC submits that Proclass' governance structure establishes the process for any existing shareholder wanting to divest of its shares in Proclass. LDC proposes to initiate this process to exit its shareholding in Proclass (**Proclass exit process**) should it be successful in obtaining control of Namoi.

79. LDC proposes that, at the time that LDC initiates the Proclass exit process, the LDC director will resign from the Proclass board. LDC Submits that the corporate governance of Proclass will ensure that at the completion of the transfer process, LDC will no longer have an ownership interest in Proclass.

WANT Cotton

80. LDC proposes to exercise its unilateral right to terminate the WANT Agreement in accordance with the terms of the WANT Agreement should it be successful in obtaining control of Namoi.

81. LDC submits that the Proposed Divestment will facilitate WANT Cotton's continued independent operations and, in accordance with notice period under the terms of the WANT Agreement, will provide sufficient time for WANT to enter into any new arrangements for the operation of the WANT gin.

82. The ACCC is continuing its assessment of the proposed acquisition to determine whether it would be likely to have the effect of substantially lessening competition in any market. The ACCC is therefore currently not in a position to form a concluded view as to the efficacy or acceptability of an undertaking of the kind being foreshadowed by LDC in the form of the Proposed Divestment.

83. In the interests of streamlining the process, the ACCC is seeking feedback on the key terms of the Proposed Divestment. In particular, whether and to what extent the Proposed Divestment is capable of addressing the competition concerns raised by the proposed acquisition.

The ACCC invites comments from market participants on LDC's Proposed Divestment. In particular, market participants may wish to comment on the following:

- To what extent would LDC's Proposed Divestment address any concerns you have in relation to the proposed acquisition?
- Is the Proposed Divestment sufficient to replace any loss of competition resulting from the proposed acquisition?
- Are you aware of any third party (including regulatory) consents required to effect the Proposed Divestment that may impact its implementation?
- Are there any other factors or risks that could effect implementation or limit the effectiveness of the Proposed Divestment?
- Any additional information or comments that you consider relevant to the ACCC's consideration of the Proposed Divestment.

ACCC's future steps

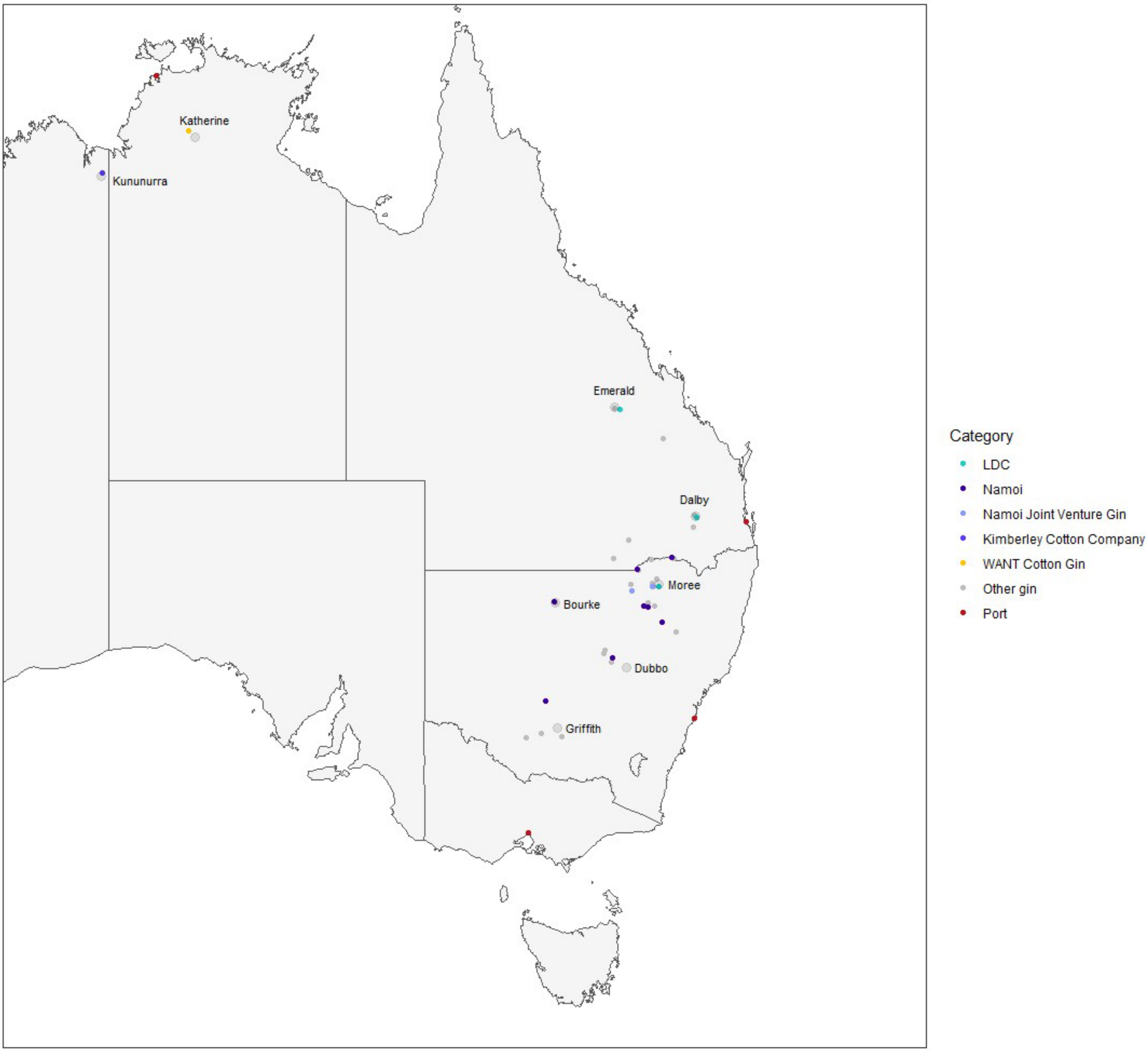
84. As noted above, the ACCC invites submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions should be emailed to mergers@accc.gov.au by no later than 5pm on 30 May 2024.

85. The ACCC is also seeking views on the proposed s87B undertaking offered by LDC in relation to its proposed acquisition of Namoi.

86. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues and on the proposed divestiture.

87. The ACCC intends to publicly announce its final view by 11 July 2024. However, the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment explaining the ACCC's final view may be published following the ACCC's public announcement.

Annexure A – Map of Cotton Gins in Australia



Annexure B – LDC Public Summary of undertakings proposed to the ACCC

Public summary of undertakings proposed to the ACCC – 13 May 2024

The Proposed Acquisition

Louis Dreyfus Company Asia Pte. Ltd. (**LDC**), through its subsidiary, Louis Dreyfus Company Melbourne Holdings Pty Ltd, is proposing to acquire all of the fully paid ordinary shares in Namoi Cotton Limited (**Namoi**) that it does not already own (**Proposed Acquisition**). LDC currently holds approximately 17% of the shares in Namoi.

Public summary of section 87B undertaking

The information set out below provides a public summary of the section 87B undertaking Louis Dreyfus Company B.V. and its relevant subsidiaries propose to give to the Australian Competition and Consumer Commission (**ACCC**).

LDC does not consider that the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any relevant market. However, to address the ACCC's competition concerns, LDC has offered commitments pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) (**Act**).

The Parties

LDC

LDC is incorporated in Singapore and is part of the LDC Group – a global merchant and processor of agricultural goods. LDC operates in the sourcing, ginning, storage, shipment and trading/marketing of cotton lint and cottonseed.

LDC operates three cotton gins located in Emerald and Dalby (Qld) and Moree (NSW). It supplies cotton warehousing and logistics services with facilities in Dalby and Port of Brisbane (Qld) and Moree (NSW).

LDC holds a minority 20% interest in Proclass, which is an independent business that provides cotton lint classing services in Australia.

It also has an unincorporated joint venture with WANT Cotton for the operation and management of the WANT gin located near Katherine (NT) (**WANT Agreement**).

Namoi

Namoi's business comprises of cotton ginning, sourcing of cotton lint, cottonseed marketing and cotton lint classing.

Namoi operates 10 cotton gins at 9 sites across NSW and Qld. Namoi is also involved in a joint venture with Sundown Pastoral Co Pty Ltd (called the Wathagar Ginning Company) with a gin located in the Gwydir Valley (NSW).

Namoi also operates Australian Classing Services Pty Ltd (**ACS**) providing cotton classing to both Namoi and other cotton processors in Australia.

It has a 17% interest in the Kimberley Cotton Company, which will operate a multi-user cotton gin in Kununurra (WA) due to be completed in July 2025.

LDC and Namoi also operate joint ventures for: (i) the storage and warehousing of cotton lint; (ii) the trading and marketing of cotton lint.

The Proposed Divestment Undertaking

LDC proposes to offer a court enforceable undertaking to the ACCC to address the ACCC's competition concerns with respect to the supply of classing services in Australia and the supply of ginning services in north-western Australia. The proposal will include LDC committing to:

- divest of its shareholding in Proclass
- the termination of the WANT Agreement

(the **Proposed Divestment**).

Implementation of the Proposed Divestment

Proclass

Proclass is an independent business that provides cotton classing services in Australia. It operates in accordance with its corporate governance structure. Its ownership structure of 40% cotton growers, 40% cotton merchants and 20% classers ensures that no single ownership group has a majority stake. The board of directors currently comprises 2 grower, 2 merchant and one classer director. LDC currently holds 20% of the shares in Proclass, which is half of the shares held by cotton merchants and has one director on the board. LDC has no control over the management or operation of Proclass.

In addition to the ownership and establishment of the operations of the Proclass business, the Proclass governance structure establishes the process for any existing shareholder wanting to divest of its shares in Proclass. LDC intends to initiate this process to exit its shareholding in Proclass (**Proclass exit process**) should it be successful in obtaining control of Namoi.

At the time that LDC initiates the Proclass exit process, the LDC director will resign from the Proclass board. The corporate governance of Proclass will ensure that at the completion of the transfer process, LDC will no longer have an ownership interest in Proclass.

Proclass will continue to operate as an independent cotton classing business during and post the Proclass exit process.

WANT

The WANT Agreement provides for LDC's contribution of its expertise and the day-to-day cotton ginning operations at the WANT gin. LDC does not hold an equity interest in the WANT gin. Control over the management, market position and strategic direction, including the manner in which WANT will compete for the supply of ginning services, is controlled by WANT Cotton.

LDC proposes to exercise its unilateral right to terminate the WANT Agreement in accordance with the terms of the WANT Agreement should it be successful in obtaining control of Namoi.

The Proposed Divestment will facilitate WANT Cotton's continued independent operations and, in accordance with notice period under the terms of the WANT Agreement, will provide sufficient time for WANT to enter into any new arrangements for the operation of the WANT gin.

The Proposed Divestment addresses the ACCC's competition concerns

The supply of cotton lint classing services in Australia

The Proposed Acquisition would result in LDC holding a 20% minority interest in Proclass and also owning Namoi's classing business – ACS. Proclass and ACS overlap in the supply of cotton lint classing services in Australia.

The ACCC has raised concerns that, as a result of the proposed acquisition, LDC could raise prices or reduce service quality for cotton classing services in Australia as growers and cotton merchants would be required to use a service under the influence of LDC.

The Proposed Divestment addresses the ACCC's competition concerns as LDC would not have any overlapping interests in the supply of cotton classing services in Australia. LDC would, through its ownership or control of Namoi, operate the ACS classing business in its current operating form. Post the initiation of the Proclass exit process and prior to completion of the sale, LDC will have no involvement in the board including any decision making relating to the Proclass business. Upon completion of the Proposed Divestment, LDC will have no ownership interest in Proclass.

Post the Proposed Divestment, LDC will be involved in the operations of one Australian classing business only - each of Proclass and ACS (under the control over LDC) will operate independently in the supply cotton classing services in Australia. As a result, there can be no influence over the operations of more than one competitor and no adverse effect on competition in the supply of cotton classing services in Australia.

The supply of ginning services in North-Western Australia

The Proposed Acquisition will result in LDC owning a less than 20% minority interest in KCC and LDC would be the contract operator of the KCC gin, subject to the direction of the KCC board of which LDC would have no control. LDC would also operate the WANT gin under the WANT Agreement. The WANT gin is located near Katherine over 500kms away, operated by LDC under ring-fenced operations.

The ACCC has raised concerns that the Proposed Acquisition will result in LDC having effective control and influence over the only two gins in North-Western Australia.

The WANT gin is now operational. The cost of ginning services has been determined by WANT Cotton for its first season. The WANT gin's operations are subject to strict ring-fencing protocols that provide for the operational and physical separation of financial support and industrial employees involved in its operation. This includes LDC WANT dedicated employees based at the gin and the physical separation by location of LDC personnel in office roles and management from LDC's Australian ginning business. Technology barriers are in place to ensure that there can be no access to or transfer of information between WANT and LDC.

The KCC gin is still under construction. KCC is targeting completion to enable it to commence ginning operations in the second half of 2025.

In order to ensure the seamless transition and operational handover from LDC of the WANT gin, the Proposed Divestment would require a period of continued operation by LDC while LDC is also operating the KCC gin (if KCC reaches its targeted timeframe for completion). This is a limited, single ginning season timeframe. Where LDC will have no control over the competitive positioning of either gin and the WANT gin is subject to ring-fenced operations, there can be no adverse competitive effects associated with this very short term overlap.

The Proposed Divestment will remove any concerns about the extent to which the operation by LDC could result in coordination between the WANT and KCC gins and ensure independent operations in the region going forward. Post the Proposed Divestment, LDC would hold only an interest in KCC and would be the operator of the KCC gin in accordance with the agreements KCC has agreed with Namoi. Through its shareholding or operation, LDC will have no control over the management, pricing or strategic direction of KCC such that it could adversely influence or control the price of ginning services during the transition period.

The Proposed Divestment will ensure that the Proposed Acquisition will not have the effect, or be likely to have the effect, of substantially lessening competition in any relevant market.