Public Competition Assessment

4 October 2019

Landmark - proposed acquisition of Ruralco

The ACCC's decision

1. On 22 August 2019, the Australian Competition and Consumer Commission announced its decision not to oppose the proposed acquisition by Nutrien Ltd (**Nutrien**) of Ruralco Ltd (**Ruralco**) (the **proposed acquisition**) after accepting a section 87B undertaking from Nutrien to divest its stores in Alice Springs, Broome and Hughenden. In Australia, Nutrien operates under the Landmark brand.

2. The ACCC considered that the proposed acquisition, taking into account the undertaking, would be unlikely to contravene section 50 of the *Competition and Consumer Act 2010* (the **Act**).

3. Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.

4. Landmark and Ruralco both supply a range of agriculture-related products and services. The ACCC considered the competitive effects of the proposed acquisition in markets for the supply of:

   - rural merchandise
   - wool broking services
   - livestock agency
   - insurance broking services
   - real estate agency, and
   - water broking services.

5. This Public Competition Assessment outlines the reasons for the ACCC's decision not to oppose, taking into account the undertaking, the proposed acquisition.

6. This assessment, like other public competition assessments, is subject to the following qualifications:

- The ACCC considers each transaction on a case-by-case basis and so the analysis and decision outlined in one assessment will not necessarily reflect the ACCC's view of another transaction, even where that other transaction may involve the same or a related market.

- As assessments are intended to be concise and do not refer to confidential information provided by the parties or other market participants, they do not necessarily set out all of the issues and information considered by the ACCC, nor all of the analysis and reasons of the ACCC.

The parties

The acquirer: Nutrien

7. Nutrien (through its Landmark brand in Australia) supplies rural merchandise through its 225 corporate stores across the country as well as supplying independent (member and non-member) stores on a wholesale basis.

8. Landmark also provides wool broking, livestock agency and export services, real estate agency and agricultural insurance broking services. Landmark has operated in Australia (through predecessor organisations) for more than 150 years.

The target: Ruralco

9. Ruralco is a publicly listed company in Australia, formed in 2006 when Combined Rural Traders (CRT) and Roberts Limited merged. Ruralco has been operating (through predecessor organisations) for more than 150 years.

10. Ruralco provides a very similar range of services to Landmark. It supplies rural merchandise through its 106 corporate stores nationally (operating under a number of brands including Roberts and Rodwells) and also supplies member stores (independent retailers who have signed a membership agreement) via its wholesale arm, CRT. These members may be branded as either CRT or Town & Country.

11. Ruralco also offers water broking services.

The transaction

12. On 27 February 2019, Nutrien announced its intention to acquire all issued shares of Ruralco by scheme of arrangement. The transaction involves Nutrien (or an Australian wholly-owned subsidiary of Nutrien) acquiring 100 per cent of the shares in Ruralco, at a total value of approximately $469 million. The scheme became effective on 13 September 2019.

Review timeline

13. The following table outlines the timeline of key events for the ACCC in this matter.

Date	Event
22/3/2019	ACCC commenced review under the Informal Merger Review Process Guidelines.
13/06/2019	ACCC published a Statement of Issues outlining preliminary competition concerns.
29/07/2019	ACCC commenced market consultation on proposed s87B undertaking.
07/08/2019	Former provisional date for announcement of decision (15th August) delayed to allow the ACCC further time to consider feedback received and the proposed s87B undertaking.
22/08/2019	The ACCC announced it would not oppose the proposed acquisition, subject to a section 87B undertaking accepted by the ACCC.

Market inquiries

14. The ACCC conducted market inquiries with a range of industry participants, including competitors, customers including farmers, input suppliers, industry bodies and other interested parties. Submissions were sought in relation to the substantive competition issues and the proposed undertaking.

Statement of Issues

15. On 13 June 2019, the ACCC published a Statement of Issues identifying preliminary concerns that the proposed acquisition may reduce competition in the supply of rural merchandise by:

    - combining two of the three largest retail chains with a national presence (national retail chains),
    - removing one of few competitors to Landmark in certain local areas where the parties' stores overlap,
    - increasing concentration at the wholesale level and reducing the number of supply options for independent retailers, and
    - increasing the ability and incentive of Landmark to discriminate against independent stores it supplies in areas where they compete with Landmark's corporate stores.

Industry background

Other industry participants

Retail

16. There are a number of other suppliers of rural merchandise at the retail level including:

    - Elders, an Australian ASX listed company with a large chain of 217 branches across Australia supplying rural merchandise and related services (agronomy, livestock agency, wool broking, real estate agency, agricultural insurance, financial and water broking services),

    - mid-sized chains including, but not limited, to AGnVET, E. E. Muir & Sons, Delta Ag, Murray Goulburn Trading, Pursehouse Rural, Lindsay Rural, North West Ag, McGregor Gourlay, Cotton Grower Services and Western Ag,

    - a large number of independent retailers (that is, small business operators who own one or a small number of stores). These stores are often affiliated with a wholesaler or buying group such as CRT or AIRR. The ACCC estimated that over 55 percent of rural merchandise stores are independent retailers.

17. Retailers generally supply a range of rural merchandise. Some retail outlets may focus on particular product lines depending on their location and the types of agriculture undertaken in that area (e.g. broad acre, pastoral, horticulture).

18. There are also specialist retailers, which focus on particular categories of products (e.g. irrigation equipment or stock feed). Specialist retailers may provide an alternative to general rural merchandise retailers for certain products, depending on factors including whether expert knowledge is required, price and availability of product.

19. Rural merchandise is also sold by online stores, but market feedback suggested that it is not a popular option for most famers.

Wholesale

20. There are five main wholesalers/buying groups who supply independent retailers (Landmark, Ruralco, AgLink, AIRR and NRI). Members of these wholesalers/buying groups may be individual retailers or a chain of retail stores.

21. AgLink is a member organisation for a group of 15 shareholders, who are independent rural merchandise retailers with around 200 locations nationally. AgLink was founded in 1986.

22. AIRR is an unlisted public company that operates as a member based buying group, marketing group and wholesaler of rural merchandise. It was established in 2006 to assist independent retailers to access benefits available from scaled collective buying and marketing. AIRR supplies rural merchandise to: 170 AIRR members (at 240 locations); 100 Tuckers Pet and Produce (Tuckers) members

(at 160 locations); and approximately 1,500 independent retailers who are not members of either AIRR or Tuckers.

23. NRI is a rural distributor group that has established partnerships with major supply companies. It has approximately 103 members. NRI does not purchase or pay for products and its members need to maintain individual accounts with each supplier. NRI helps retailers to set up these accounts so that retailers can have access to NRI’s supply terms.

24. Manufacturers/importers of rural merchandise also sell directly to independent retailers, particularly for high-volume products.

Farmers/producers

25. Rural merchandise is then sold by the retailer to the farmer. Farmers will typically either come into a store to acquire products and advice on the spot, or place orders over the phone or by email for delivery. Farmers who manage large farms may issue tenders to retailers or manufacturers for the supply of their rural merchandise needs.

Market definition

Product dimension – rural merchandise

26. The ACCC considered that the relevant market was likely to comprise the supply of a range of rural merchandise products. The precise products supplied vary somewhat from region to region (according to the requirements of local farmers), but typically include fertiliser, agricultural chemicals, seed, fencing, animal health products, stock feed and other miscellaneous merchandise. Some rural merchandise stores also offer agronomic advice.

27. Many farmers value the convenience of purchasing products from multiple categories from a single supplier, therefore purchasing from a specialist retailer is not a good substitute for a general rural merchandise retailer in many instances. However, in some instances farmers may choose speciality retailers over general rural merchandise retailers, particularly for very specialised products such as irrigation equipment or for high value purchases. There is also some ability for specialist retailers to expand into the supply of general rural merchandise, but it may take some time and investment to establish the required distribution arrangements and product knowledge.

Functional dimension – rural merchandise

28. The ACCC considered it was appropriate to separately analyse the effect of the proposed acquisition in relation to retailing of rural merchandise and wholesaling of rural merchandise. While Landmark and Ruralco are vertically integrated, many industry participants are not and only operate as either wholesalers or retailers.

29. The ACCC also considered up-stream markets, for the acquisition of rural merchandise products from manufacturers/importers.

Geographic dimension – rural merchandise

30. The ACCC considers that in retail markets involving chains such as Landmark and Ruralco, competition may occur at more than one geographic level, for example national and local. While all retailers compete to attract customers from other similar retailers in the same local area, retail chains typically also compete through elements of their retail offers that may be determined across a broader area. They make such broader decisions by reference to the broader offer of other chains and the aggregate constraint imposed by independent retailers.

31. However, the ACCC found that, unlike other retail industries such as supermarkets, competition in the supply of rural merchandise is substantially local. This is driven by demand side factors, in particular the variances in customer requirements in different parts of the country, and the importance of service and customer relationships.

32. Although most farmers shop at rural merchandise stores located in their local areas, the typical distance travelled varies significantly between regions. In most areas, the majority of customers said they would travel around 50km for rural merchandise. However, customers may also travel further where they have a good relationship with a particular retailer or require a retailer who specialises in a particular line of products. In remote areas, farms are often located much further than 50km from the nearest rural merchandise store. In these areas, a significant proportion of sales are likely to occur over the phone (i.e. without the customer visiting a store). However, in some cases farmers may travel hundreds of kilometres to visit a retail store (often combining such trips with other errands).

33. Alternatively, customers may order rural merchandise from retailers located in their closest major city, and take advantage of discounted freight rates on trucks travelling on the return leg of delivery routes. On the other hand, many customers stated that they value the relationship with their local retailer and the advice they provide about local conditions.

34. In relation to wholesale supply, the ACCC found that the market for the wholesale supply of rural merchandise to independent retailers was likely to be national, as most of the major wholesalers have national operations.

Other markets

35. The ACCC also considered the likely effects of the proposed acquisition on separate markets for the supply of:

- wool broking services
- livestock agency
- insurance broking services
- real estate agency, and
- water broking services.

Rural merchandise – national competition effects

36. The ACCC determined that the proposed acquisition was not likely to substantially lessen competition at the national level.

Limited national competition

37. Landmark and Ruralco are both large-scale, multi-category chain retailers which operate nationally with sophisticated integrated operations. Aspects of their strategy are set at the national level, and their national scale contributes to their effectiveness as a competitor in every local area where they operate.

38. However, competition on national initiatives is not a strong feature of this industry. Unlike supermarket retailing, competition is primarily determined by local factors. Landmark and Ruralco set their retail prices and product ranges locally in response to local competitive conditions, including competition from independent retailers. The strength of retailers (whether part of a chain or not) varies significantly from local area to local area. Relationships are more important than branding to most customers. This means that a national presence is not as great an advantage as in some other retail industries, and there is opportunity for independent retailers to compete with large chains.

39. The ACCC estimated that over 55 per cent of retail stores in Australia are independently owned, the majority as a small business operation.[1] Market inquiries confirmed that many of the independent stores, and particularly the smaller chains, compete aggressively.

40. The ACCC did not find that large chains such as Landmark and Ruralco have access to strong economies of scale, particularly in distributing products to stores, which give them significant competitive advantages over smaller retailers. Market feedback indicated that a substantial proportion of products are delivered direct from the manufacturer's facilities to individual stores or to the end customer/farmer. Accordingly economies of scale in distribution are not as significant as in some other retail industries. Further, wholesalers such as AIRR provide smaller retailers with access to some of these scale benefits.

41. The ACCC considered whether removing one of only three large national retail chains would reduce competition by eliminating one of few large buyers of rural merchandise that is able to obtain lower prices. If this were the case, the proposed acquisition may eliminate a particularly effective competitor and reduce the competitive pressure on Landmark and Elders to pass through cost savings to end consumers. However, when the ACCC investigated the procurement cost advantages enjoyed by the large retail chains, it did not find that these advantages were substantial.

Buyer power

42. A key issue in the ACCC's review was whether the proposed acquisition would significantly increase the merged firm's market power in the acquisition of rural merchandise products. If this were the case, then the proposed acquisition may substantially lessen competition in the acquisition of particular rural merchandise products resulting in lower prices to the manufacturers/importers of those products.

---

[1] This excludes large and medium sized chains such as Landmark, Ruralco, Elders, Delta Ag, Murray Goulburn Trading, and other chains who predominantly self-supply and do not buy through a wholesaler.

43. A combined Landmark/Ruralco would be a very large buyer of some products, and this may give it additional bargaining power with manufacturers/importers. However, the ACCC found that any such impacts on manufacturer/importers would not amount to a substantial lessening of competition.

44. First, a large proportion (by volume) of products sold by rural merchandise stores are imported products or products that, if not imported, are globally traded commodity type products. For these products, a combined Landmark/Ruralco will still be a very small proportion of global demand.

45. Second, some products sold by rural merchandise retailers are also sold by other stores including hardware stores, vet supply stores and building supply stores. For those products, the manufacturer/importers are likely to have sufficient remaining routes to markets.

46. However, there are some products which are either manufactured in Australia or imported by Australian companies, for which the rural merchandise supply chains are the main supply channel. A small number of these suppliers reported that a combined Landmark/Ruralco would constitute a large proportion of their sales. However, on balance, the ACCC considered that these effects would not amount to a substantial lessening of competition.

Barriers to entry

47. Barriers to entry on a small scale for new rural merchandise retailers do not appear to be especially high. It is not uncommon for managers of stores owned by large chains to leave and establish their own business independently.

48. There are also a number of mid-sized retail chains who have the potential to expand and further constrain Landmark.

Competition analysis – local retail markets

49. The ACCC analysed the local areas where:

- a Landmark corporate store overlaps with a Ruralco corporate store, and
- a corporate store of one party overlaps with a member store of the other party.

50. The ACCC engaged with market participants in many local areas, including farmers, rural merchandise retailers and specialist retailers.

51. The factors we took into account in our assessment of the local overlap areas included:

- the number of competing general rural merchandise retailers that would remain in each area
- the extent of competition from retailers located further afield. For example, delivery of rural merchandise from outside of local areas provides some competitive constraint, particularly in remote areas. However, it will not always be a suitable alternative, particularly when products are required urgently

- the presence of speciality retailers, who may provide some competition, and
- that barriers for the new entry of rural merchandise retail stores did not appear to be especially high.

52. The ACCC considered that the removal of Ruralco as a competitor was likely to lead to a substantial lessening of competition in Broome, Alice Springs and Hughenden:

    - In Broome, the acquisition would reduce the number of rural merchandise retailers from two to one (although a number of water and irrigation equipment specialist retailers would remain). The region is very remote, with the next closest rural merchandise retailer located in Derby, approximately 200km away.
    - In Alice Springs, which is also a remote region, the acquisition would reduce the number of rural merchandise retailers from three to two (although a number of specialist retailers providing water infrastructure products and stock feed would remain).
    - In Hughenden, located nearly 400km west of Townsville, the proposed acquisition would reduce the number of rural merchandise retailers from three to two (again, some specialist retailers would remain).

53. The ACCC therefore accepted the divestments proposed by Nutrien in these three local areas, and considered these would resolve its competition concerns in these areas.

54. The ACCC considered that a substantial lessening of competition was not likely in the other local areas where Landmark and Ruralco overlap, as there would remain sufficient competitors to constrain the combined Landmark-Ruralco post-acquisition.

Competition analysis – wholesale supply of rural merchandise

Horizontal effects

55. The ACCC considered the impact of the proposed acquisition on the wholesale supply of rural merchandise, and whether the proposed acquisition was likely to lead to increased prices or decreased service levels in rural merchandise wholesaling.

56. The ACCC understands that the proposed acquisition would reduce the number of major wholesale suppliers (including buying groups) from five to four, and Landmark would be the wholesaler to approximately a third of independent stores nationally.

57. Ruralco (through CRT) is a major rural merchandise wholesaler to independents and the CRT brand has strong recognition. By contrast, Landmark has historically focussed more on its retail business. Market feedback and other

information available to the ACCC did not indicate that Landmark and CRT are especially close competitors at the wholesale level.

Alternative wholesalers

58. The major competing wholesalers/buying groups are AIRR, NRI and AgLink. There are some differences between business models, which may affect their suitability for certain retailers. AIRR is a major wholesaler with a significant market share that supplies many small retailers as well as some larger ones. AgLink appears to primarily supply retail chains rather than standalone stores, and the ACCC understands that NRI does not purchase products on behalf of its members, who need to maintain direct accounts with each supplier.

59. Market participants confirmed that although most independent stores have a primary wholesaler, many stores also acquire rural merchandise from alternate wholesalers. For example, a Landmark member may purchase additional products from AIRR.

Ability of independent stores to purchase direct from manufacturer/importers

60. For the majority of independents, purchasing direct from manufacturer/importers appears to be a partial but not complete substitute to purchasing from wholesalers. Stores tend to purchase direct from manufacturer/importers on certain product lines, for example where they require large volumes (eg a whole pallet) or the manufacturer/importer is offering a better price than the wholesaler. Larger retail chains are more likely to purchase a greater proportion of products directly from the manufacturer/importer. Nevertheless, there are circumstances where manufacturer/importers are unwilling to deal directly with smaller retailers, for example they may prefer dealing with a single account (the wholesaler's account) and having a guarantee of payment from the wholesaler.

Barriers to entry for new wholesalers

61. The ACCC considered the potential for entry by new rural merchandise wholesalers or buying groups.

62. Requirements for a new rural merchandise wholesale/buying group business are likely to include:

- establishing supply arrangements with a range of manufacturers,
- (potentially) establishing professional connections with industry experts to organise training and networking conferences, and
- (potentially) developing distribution networks and warehousing facilities (at least for those wholesalers who wish to supply smaller stores).

63. The ACCC understands that it may not be essential for wholesalers/buying groups to have a substantial distribution network as a substantial proportion of products are delivered direct from the manufacturer's facilities to individual stores or the end customer farmer.

64. However, the development of warehousing facilities may be necessary to supply smaller stores, due to the smaller quantities of rural merchandise that smaller stores purchase, and this is likely to be capital intensive.

Conclusion on horizontal effects

65. The ACCC concluded that the proposed acquisition was unlikely to lead to a substantial lessening of competition at the wholesale level. Key relevant factors to this decision included:

- Landmark and Ruralco did not appear to be especially close competitors at the wholesale level. Landmark's wholesale business is relatively small. Few independent stores mentioned Landmark and Ruralco as their first and second options for wholesale supply.

- AIRR is a significant competitor to a combined Landmark/Ruralco and its potential acquisition by Elders does not seem likely to change this. NRI and AgLink also provide wholesale competition for some stores (but are not viable options for all stores).

- Buying direct from manufacturer/importers or from speciality wholesalers may enable some stores to reduce their reliance on full line wholesalers, although this is not likely to be a substantial constraint on a combined Landmark/Ruralco.

Vertical competition concerns

66. The ACCC also considered potential vertical competition issues that could arise from the proposed acquisition. Some market participants suggested that, following the proposed acquisition, Landmark may not provide wholesale supply of rural merchandise on competitive terms to independently owned stores. In particular, some market participants raised concerns that in local areas where there is also a Landmark corporate store, Landmark may have the incentive to favour its corporate stores over CRT member stores. The same concern could apply to Landmark member stores in areas where there is currently a Ruralco corporate store.

67. It would be rational for Landmark to discriminate against independently owned stores if this would increase overall profits for Landmark. Whether discrimination would be profitable depends on factors including the ability of the independently owned store to switch to another wholesaler and the number of retail competitors in a local area (and how closely they compete with the Landmark corporate store and the independently owned store).

68. As explained above, the ACCC found that independently owned stores are generally able to switch to another wholesaler. Further, in most areas where the parties' corporate and member stores overlapped there were a number of other retail competitors in the local area. Accordingly, any attempt by a combined Landmark/Ruralco to broadly engage in foreclosure is likely to be rendered unprofitable by those members leaving or reducing their purchases, with no guarantee that the lost wholesale sales would be recouped at the retail level.

Competition analysis – wool broking, livestock agency and other rural services

69. The ACCC considered the effect of the proposed acquisition on competition in wool broking and livestock agency, as well as insurance broking, real estate agency and water broking.

Wool broking

70. The ACCC considered that the proposed acquisition is unlikely to substantially lessen competition in the supply of wool broking services. The ACCC outlined its analysis of the proposed acquisition in relation to the wool broking market in the Statement of Issues, available on the public register. The key aspects of the analysis are set out below.

71. The ACCC understands that, based on 2018 data, the six largest wool brokers in the Western region (Western Australia) are:

- Landmark (~23% market share)
- Ruralco (~23% market share)
- Elders (~18% market share)
- Dyson Jones (~14% market share)
- West Coast Wool (~12% market share)
- Wool Agency (~9% market share)

72. Together, these six wool brokers hold approximately 98 per cent market share of wool sold by auction.

73. The six largest wool brokers in the Southern region (Tasmania, Victoria, South Australia, parts of New South Wales) are:

- Elders (~24% market share)
- Landmark (~19% market share)
- Ruralco (~12% market share)
- Quality Wool (~12% market share)
- Australian Wool Network (~11% market share)
- Fox & Lillie Rural (~10% market share)

74. Together, these six wool brokers hold approximately 88 per cent market share of wool sold by auction. The remaining 12 per cent market share is held by 13 wool brokers. These small brokers individually hold no more than 2 per cent market share.

75. Notwithstanding Landmark and Ruralco's high market shares, particularly in the Western region, the ACCC considered that other wool brokers are likely to continue to place competitive pressure on combined Landmark-Ruralco wool broking operations in the Western and Southern regions. Wool producers generally indicated that there were a number of wool brokers available to them in their region.

76. Market inquiries indicated that the six wool brokers listed for each of the Western and Southern regions above provide comparable levels of service at comparable rates.

77. Market participants also indicated that the smaller wool brokers (those with 2 per cent market share or less) are generally able to compete effectively with larger ones. Market inquiries indicated that small wool broking operations are viable without owning their own storage facilities, logistics infrastructure or invoicing systems. Smaller wool brokers are able to provide the essential services of a wool broker such as quoting an expected price, marketing and selling wool at auction, whilst paying to use the back end infrastructure of larger wool brokers or specialist wool handlers such as AWH. These smaller wool brokers pass on the storage and handling costs to the producer.

78. Some wool producers indicated a preference for larger brokers who have established relationships with primarily international buyers. However, producers generally considered that there are large brokers other than Landmark and Ruralco, or that smaller brokers were a suitable alternative in their area.

79. The ACCC considered that barriers to initial entry for wool brokers may not be especially high, and barriers to farmers switching to new wool brokers are generally low.

Livestock agency

80. The ACCC considered that the proposed acquisition is unlikely to substantially lessen competition in the supply of livestock agency services. The ACCC outlined its analysis of the proposed acquisition in relation to the livestock agency market in the Statement of Issues, available on the ACCC public register.[2] The key aspects of the analysis are set out below.

81. The parties provide livestock agency services across Australia, with the parties' agents often being based at a local rural merchandise branch.

82. Landmark, Ruralco, Elders and Ray White Rural and Livestock provide livestock agency services across all states and territories. In addition, there are large livestock agencies that have a significant presence at the state or regional level including Forbes Livestock & Agency Co (NSW), Delta Agribusiness (NSW), HF Richardson (Victoria), S&C Livestock (WA) and Westcoast Livestock (WA).

83. The ACCC understands that Landmark's share of livestock sales post-acquisition would be modest.

84. Market inquiries indicated that there are suitable alternatives in the provision of livestock agency services to the parties in each region where they overlap.

[2] https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews

85. Market inquiries indicated that in certain remote areas, including Broome and Alice Springs, the choice of livestock agents with a local presence would be limited after the proposed acquisition. However, market feedback indicated that livestock agents will travel to service clients in remote areas where they don't have a permanent presence if there is sufficient demand (for example, a livestock agent servicing northern Queensland also services cattle producers across the Northern Territory and agents located close to Perth have clients in the Broome region).

86. Some livestock producers indicated a preference for using larger agent companies which have established relationships with buyers. However, producers generally considered smaller or independent agents are a suitable alternative. Further, it is not necessary for an agent to have an established logistics business as producers typically use the logistics networks of third parties. Agents may assist producers in organising logistics via a third party.

87. The ACCC also considered the threat of entry or expansion may impose some competitive constraint on Landmark post-acquisition as the largest barrier to entry for livestock agents is establishing relationships with livestock producers. The ACCC understands agents may switch from one company to another or to commence their own operations with minimal outlay of capital. Producers tend to follow their livestock agent and are willing to use the services of independent livestock agents or smaller livestock agent companies.

88. In some areas, saleyards are privately owned by one or a combination of livestock agency businesses, such as Landmark or Ruralco. The ACCC understands that these saleyards generally do not allow access to livestock agents not affiliated with the businesses that own the saleyards. However, this appears to be an existing feature of the market. In most regions, there are saleyards owned by councils or independent third party operators, which are accessible to all agents by payment of a fee.

89. Some market participants also raised concerns about consolidation in the ownership of Auctions Plus. The ACCC did not consider that the removal of Ruralco as a third shareholder and increase in Landmark's shareholding raises significant competition issues.

90. The ACCC also considered the parties' overlap in live export, and considered that there is likely to be sufficient constraint from remaining competitors in the live export market.

Other rural services including insurance broking, real estate agency and water broking

91. The ACCC considered the proposed acquisition is unlikely to substantially lessen competition in the supply of insurance broking, real estate agency or water broking services.

92. In relation to water broking and trading services, the ACCC understands that there is extremely limited overlap between the parties, because Landmark only has a single water broker who operates in the Goulburn Valley, Victoria.

93. In relation to the supply of real estate agency and insurance broking services, Landmark will have a relatively small market share post-acquisition and there appears to be a range of remaining competitors including large national

agents/brokers and independent agents or brokers to constrain Landmark post-acquisition.

Undertakings

94. In order to address the ACCC's competition concerns in relation to Alice Springs, Broome and Hughenden, Nutrien provided a court enforceable undertaking pursuant to section 87B of the Act to divest its retail rural merchandise stores and related assets and personnel in Alice Springs, Broome and Hughenden. The stores must be divested within a specified period to a purchaser or purchasers to be approved by the ACCC.

95. The ACCC spoke to a range of market participants including retailers operating in the same local areas as the proposed divestiture businesses, customers in local areas, and a broader range of competitors (who may also be potential purchasers of the divestiture businesses). The ACCC concluded that Nutrien's proposed divestitures addressed its competition concerns in these areas.

96. A brief summary of the undertakings offered by Nutrien is set out below:

    - *Divestiture package* – divestiture of three of Nutrien's businesses located in the following locations:

        - Alice Springs, Northern Territory;
        - Broome, Western Australia; and
        - Hughenden, Queensland.

      Divestiture will include, all fixed assets, inventory, records, employees and applicable licences.

    - *Sale of the land, and lease of the land* – divestiture will include the sale of the properties owned by Nutrien in Broome and Hughenden, and the transfer or assignment of the leased property in Alice Springs

    - *Purchaser approval* – the ACCC must approve the proposed purchaser or purchasers.

    - *Independent auditor* – Nutrien must appoint an ACCC approved independent auditor to monitor Nutrien's overall compliance with the undertaking.

    - *Independent manager* – Nutrien must appoint one or more ACCC approved Independent Managers to manage the divestiture businesses from completion of the proposed acquisition until the divestiture businesses are sold to the approved purchaser/s.

    - *Transfer of all consents* – this will include the transfer of any government or third party consents. For example, agency agreements relevant to the divestiture businesses.

- *Transfer of transferred personnel* – the undertaking provides for the transfer of all employees and service providers under a contract at the divestiture businesses (who consent to the transfer or their employment or contract of service). The undertaking also provides that Nutrien must not attempt to poach those employees back for at least 24 months.

- *Compliance with any approved transitional technical assistance and/or transitional supply agreements* – if required by the approved purchaser/s Nutrien must supply any technical assistance and/or any goods or services on a transitional basis, in order for the approved purchaser/s to be established as a viable, effective, stand-alone, independent and long-term competitor/s in the retail supply of rural merchandise in the relevant local market.

97. A copy of the undertaking is available on the ACCC mergers register and undertakings register.

Conclusion

98. Based on the above analysis, the ACCC concluded that the proposed acquisition of Ruralco by Nutrien, taking into account the undertaking, would not be likely to have the effect of substantially lessening competition in any market in Australia.