Statement of Issues

17 February 2022

Zoetis – proposed acquisition of Jurox

Purpose

1. Zoetis Australia Research and Manufacturing Pty Ltd, a wholly owned subsidiary of Zoetis Inc. (**Zoetis**) proposes to acquire Betrola Pty Ltd, including its wholly owned subsidiary, Jurox Pty Ltd (**Jurox**).

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

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

Overview of ACCC's preliminary views

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

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

Issues of concern

Removal of one of Zoetis' closest competitors in the supply of intramammary antibiotics for lactating cows, intramammary antibiotics for dry cows, and teat sealants for cows

6. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the supply of each of intramammary antibiotics for lactating cows, intramammary antibiotics for dry cows, and teat sealants for cows in Australia.

7. The ACCC is concerned that in each of the above markets, Jurox is likely to be one of Zoetis' closest competitors. Alternative suppliers and the threat of new entry or expansion are unlikely to significantly constrain Zoetis post-acquisition. This in turn will likely lead to higher prices in each market.

Removal of one of Zoetis' closest competitors in the supply of endoparasiticides and endectocides for sheep (sheep parasiticides)

8. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the supply of endoparasiticides and endectocides for sheep (**sheep parasiticides**) in Australia.

9. The ACCC is concerned that Jurox is one of Zoetis' closest competitors, and that, post-acquisition, Zoetis will control two of the three sheep parasiticides that are most effective at managing parasiticide resistance. Further, the threat of new entry or expansion is unlikely to significantly constrain Zoetis post-acquisition. This in turn will likely lead to higher prices in this market.

Issues that may raise concerns

Consolidation in competitors in five markets for the supply of various companion animal products

10. The ACCC's preliminary view is that the proposed acquisition may substantially lessen competition in the supply of the following companion animal products in Australia:

    a) Pre-anaesthetics and sedatives (opioids)

    b) Pre-anaesthetics, sedatives, and short-term anaesthetics (non-opioids)

    c) Antidotes for short term pre-anaesthetic sedatives

    d) Long-acting injectable corticosteroids

    e) Injectable penicillin.

11. The ACCC is concerned that post-acquisition, Zoetis may face substantially weaker competitive constraints in each market because the proposed acquisition will result in the consolidation of the three largest suppliers to two in three markets, and of the four largest suppliers to three in the other two markets. Further, existing generic products provided by smaller suppliers, and the threat of new entry or expansion, may only provide a low level of constraint on Zoetis post-acquisition. The result may be higher prices in these markets.

Zoetis' increased ability and incentive to engage in anti-competitive bundling using Alfaxan

12. The ACCC's preliminary view is that the proposed acquisition may substantially lessen competition in certain companion animal markets by providing Zoetis with a greater ability and incentive to engage in anti-competitive bundling using Jurox's Alfaxan product than Jurox has presently.

13. This is because Alfaxan is likely a 'must-have' product for companion animal veterinary practices and, post-acquisition, Zoetis will have a significantly greater companion animal product portfolio than Jurox does now.

Making a submission

14. The ACCC invites submissions from interested parties.

15. Interested parties should provide submissions by 5pm on 11 March 2022. Responses may be emailed to mergers@accc.gov.au with the title: Submission re: Zoetis/Jurox - attention Janet Li / Steven Lee. If you would like to discuss the matter with ACCC staff or have any questions about this Statement of Issues, please contact Janet Li on 02 9102 4024 or Steven Lee on 02 6243 1347.

16. The ACCC anticipates making a final decision on 28 April 2022, 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/public-registers/mergers-registers/public-informal-merger-reviews.

Confidentiality of submissions

17. 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'

18. 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.

19. 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.

Industry background

20. The animal health industry develops and manufactures animal health products that detect, prevent, or treat animal health concerns. This includes products such as veterinary medicines, vaccines, diagnostics, and feed supplements.

Production animals and companion animals

21. The animal health industry is generally grouped into two overarching categories: production animals and companion animals. Production animals or livestock includes species such as cattle, sheep, pigs, goats, and poultry. Companion animals include pets such as cats, dogs, and horses.

Prescription and over-the-counter (OTC) products

22. Some animal health products require a prescription and are only available through veterinarians (**vets**). Manufacturers are not allowed to offer these products directly to consumers. Prescription animal health products include antibiotics, pre-anaesthetics and sedatives, and anti-inflammatories.

23. Other products are available over-the-counter (**OTC**) and can be purchased without a prescription from various specialty wholesalers, rural resellers, retailers and/or vets. OTC animal health products include parasiticides.

Licensing requirements for manufacturers

24. The Agricultural and Veterinary Chemicals Code (**Agvet Code**) requires all manufacturers of veterinary chemical products in Australia to be licensed with the Australian Pesticides and Veterinary Medicines Authority (**APVMA**), unless exempt. The APVMA conducts initial and ongoing audits to determine whether manufacturers comply with the statutory criteria necessary to obtain a licence, including compliance with the Code of Good Manufacturing Practice (**GMP**).

25. Overseas manufacturers supplying products to Australia are required to comply with the same standards applied to Australian manufacturers. The APVMA will assess an overseas site for GMP compliance.

26. Suppliers without their own manufacturing facilities may be able to use contract manufacturing and contract packing organisations.

Pioneer and generic products

27. Manufacturers of animal health products can develop:

- **pioneer** or **originator** products with patented active ingredients.
- **generic** products, being a copy or image of originator products – generic products contain the same active ingredient at the same concentration as the originator product but may contain different non-active ingredients.[1]

---

1 APVMA, '[Definition of terms]', accessed 16 February 2022.

28. Pioneer companies are active in the research and development of new animal health products. This is an expensive and time intensive process due to the clinical trials required for effectiveness and safety. Pioneer products can take up to a decade or longer to research, develop and register, and the process can cost from millions to tens of millions of dollars, depending on the product.

29. Once pioneer products come off patent, generic drugs can enter the market. The process to produce generics is generally less expensive and shorter, as producers can use the lapsed patent to reverse engineer the drug and can also use the data submitted by the pioneer registrant to assist with registering the generic product. APVMA requires that the generic product have a similar level of efficacy and safety to the pioneer product when applied or administered in the same way.[2]

30. Some companies develop pioneer animal health products, some companies produce generic animal health products, and some companies produce both pioneer and generic animal health products.

Registration of animal health products

31. Animal health products are veterinary chemical products that must be registered with the APVMA and meet the applicable statutory criteria regarding safety, trade, efficacy, and labelling.

32. The application fee and assessment period vary depending on the product and the complexity of the application. For pioneer products, the timeline for registration is generally around 18 months and assessment fees can exceed $100,000. Registration of generic products is shorter and less expensive. There are also ongoing fees to maintain product registrations.

Animal health product suppliers in Australia

33. There are global pharmaceutical companies manufacturing and supplying animal health products to Australia, including Boehringer Ingelheim, Elanco, MSD, Norbrook, Virbac and Zoetis. Many of these have manufacturing facilities in Australia.

34. There are also Australian-based manufacturers, such as Abbey Animal Health, Jurox and Troy Laboratories.

Key customers in Australia

35. OTC products for production animals are mainly sold to agricultural rural resellers such as Nutrien and Elders. Prescription products for production animals are supplied to vets, including vets who consult for large intensive customers (such as dairy, swine and poultry farmers) and corporate vet groups such as Apiam Animal Health.

36. OTC products for companion animals are sold to specialty wholesalers such as Provet, Lyppard, and Cenversa. Other customers are pet retail chains (including online retailers) and individual vet clinics and pet stores. Prescription products for

---

2 APVMA, 'Definition of terms', accessed 16 February 2022.

companion animals are sold to specialty wholesalers, vet buyer groups such as VetPartners, large vet chains such as Greencross, and individual vet practices.

37. In the last few years Zoetis has adopted a direct-to-vet distribution model for its prescription and OTC companion animal products that bypasses specialty wholesalers. Zoetis still uses rural resellers in the distribution of OTC production animal products.

The parties

Zoetis

38. Zoetis is a public company listed on the New York Stock Exchange. Zoetis operates in global development, manufacturing and marketing of veterinary medicines and vaccines for companion animals and production animals.

39. Zoetis' operating entities in Australia include Zoetis Australia Pty Ltd, Zoetis Australia Research & Manufacturing Pty Ltd and Virtual Recall Pty Ltd. Zoetis' operations in Australia comprise research and development, manufacturing, and sales/marketing.

Jurox

40. Jurox is a private family-owned veterinary pharmaceutical company based in Australia. Jurox researches, develops, manufactures, and sells a range of over-the-counter products and veterinary medicines for livestock producers, vets, and pet owners. Jurox's products are marketed in over 20 countries globally. Most of Jurox's products are manufactured at Jurox's plant in Rutherford, New South Wales.

The proposed transaction

41. Zoetis Australia Research and Manufacturing Pty Ltd, a wholly owned subsidiary of Zoetis, proposes to acquire 100 per cent of the issued share capital of Betrola Pty Ltd, including its wholly owned subsidiary, Jurox. The proposed acquisition was announced on 4 August 2021.

Areas of overlap

42. In Australia, Zoetis and Jurox overlap in the supply of various prescription and OTC products for production animals and companion animals. This Statement of Issues outlines the ACCC's preliminary competition concerns in the following nine areas of overlap:

    - Intramammary antibiotics for lactating cows
    - Intramammary antibiotics for dry cows
    - Teat sealants for cows
    - Endoparasiticides and endectocides for sheep

- Pre-anaesthetics and sedatives (opioids) for companion animals
- Pre-anaesthetics, sedatives, and short-term anaesthetics (non-opioids) for companion animals
- Antidotes for short term pre-anaesthetic sedatives for companion animals
- Long-acting injectable corticosteroids for companion animals
- Injectable penicillin for companion animals

43. This Statement of Issues also outlines the ACCC's preliminary concern that the proposed acquisition may substantially lessen competition in certain companion animal markets, by providing Zoetis with the ability and incentive to engage in anti-competitive bundling using Jurox's Alfaxan product.

Issue of concern: the supply of intramammary antibiotics for lactating cows, intramammary antibiotics for dry cows and teat sealants for cows

44. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the supply of each of the following products in Australia:

    a) intramammary antibiotics for lactating cows

    b) intramammary antibiotics for dry cows, and

    c) teat sealants for cows.

45. The ACCC is concerned that in each of the above markets, the proposed acquisition is likely to remove one of Zoetis' closest competitors, and that alternative suppliers and the threat of new entry or expansion are unlikely to significantly constrain Zoetis post-acquisition. This in turn, will likely lead to higher prices in each market.

Relevant markets

46. **Intramammary antibiotics for lactating cows** are used to treat bovine mastitis, a bacterial infection of the mammary glands (glands within the udders) of dairy cattle, during lactation. Bovine mastitis can reduce milk quality and yield by causing clot formation. Intramammary antibiotics are administered via infusion (injection) into the mammary glands. Following antibiotic treatment, milk is withheld from human consumption for a period, which varies depending on the product used. Intramammary antibiotics for lactating cows are prescription-only products prescribed to farmers by vets.

47. **Intramammary antibiotics for dry cows** are similar to those for lactating cows, except they are administered to cows that are between lactations. Intramammary antibiotics for dry cows are also prescription-only products prescribed to farmers by vets.

48. **Teat sealants** protect dry cows and heifers from new intramammary mastitis infections by creating a physical seal against bacteria entering the teat. Teat sealants are administered via infusion and can reduce the need for antibiotics. Teat sealants are OTC products and are generally available through specialty wholesalers, rural resellers and vets without a prescription. The ACCC understands that farmers are increasingly using teat sealants to lower the rate of infections, although it is unclear whether this is gradually reducing the demand for intramammary antibiotics.

Zoetis and Jurox are likely to be close competitors

49. The ACCC's investigation indicates that the proposed acquisition would:

    a) combine the two largest suppliers of intramammary antibiotics for lactating cows and remove Zoetis' closest competitor

    b) combine two of the four largest suppliers of intramammary antibiotics for dry cows and remove one of Zoetis' closest competitors, and

    c) combine two of the three largest suppliers of teat sealants for cows and remove one of Zoetis' closest competitors.

50. Market feedback indicates that, for intramammary antibiotics for lactating cows, Zoetis' Mastalone is widely considered to be the pioneer product and market leader with strong brand equity. Zoetis also supplies Special Formula Suspension, Orbenin LA and Clavulox LA. The ACCC understands that most farmers prefer to use the Zoetis products due to strong brand loyalty. Market feedback indicates that Jurox (which supplies Ampiclox LC, Juraclox LC and Maxalac LC) is the second leading supplier and competes closely with Zoetis. Specifically, farmers that are particularly price-sensitive will use Jurox's products instead of Zoetis' products.

51. Market feedback also indicates that Zoetis is a key supplier of intramammary antibiotics for dry cows, with its pioneer product Orbenin Enduro. Many market participants consider that Jurox (which supplies Ampiclox DC, Juraclox DC and Maxalac DC) is another key supplier. The ACCC understands that many farmers prefer to use either Zoetis' or Jurox's dry cow products due to strong brand loyalty.

52. For teat sealants, the ACCC's investigation indicates that Zoetis is the main supplier, with its Teatseal product, followed by Jurox, with its U-Seal product, and Norbrook, with its Sureseal product.

Alternative suppliers are unlikely to compete strongly with Zoetis and Jurox

53. The ACCC's preliminary view is that, in each of the three relevant markets, alternative suppliers would be unlikely to provide a significant constraint on Zoetis post-acquisition.

54. The ACCC understands that, in addition to Zoetis and Jurox, MSD, Elanco and Norbrook supply products in one or more of the three relevant markets. The ACCC also understands that other suppliers (with very minimal market shares) supply generic products in one or more of these markets. However, market feedback indicates that in each of these markets, alternatives to Zoetis and Jurox are less trusted by farmers.

New entry or expansion is unlikely

55. The ACCC's preliminary view is that the threat of new entry or expansion on a scale sufficient to constrain Zoetis post-acquisition is unlikely in each of the three relevant markets. Market feedback indicates that barriers to entry or expansion into each relevant market are high. Specifically:

    a) developing products can be expensive and time consuming, and requires technical expertise

    b) establishing manufacturing facilities requires significant capital investment, time and costs to meet regulatory requirements

    c) the products in each of the relevant markets must be produced in a sterile manufacturing facility

    d) the manufacturing process requires a high degree of technical expertise, capital-intensive technology, and equipment

    e) special plastic syringes for drug administration are required for intramammary antibiotics, which only a few facilities in Australia can produce, and

    f) there are additional costs and time associated with the APVMA product registration process.

The ACCC invites comments from market participants on its concerns in relation to the supply of intramammary antibiotics for lactating and dry cows and teat sealants. In particular, market participants may wish to comment on the following:

For each relevant market:

1. How closely each product offered by Zoetis, Jurox and other suppliers, including suppliers of generic products, compete, taking into account:
    a. supplier factors, such as brand reputation and service levels
    b. product factors, such as types of active ingredients, dosage of active ingredients, efficacy, type of treatment regimes, duration of milk withholding period, price, and
    c. any other relevant factors.
2. The likelihood of new entry or expansion if, post-acquisition, Zoetis increased prices by 5 to 10 per cent, with reference to, for example:
    a. the factors listed at paragraph 55, and
    b. the extent to which suppliers could use third party services, such as contract manufacturing or packing organisations, or third-party sterilisation services.
3. Whether large retail or vet buying groups can bypass Australian suppliers and purchase these products from overseas or support a new supplier to enter the Australian market.

Issue of concern: the supply of endoparasiticides and endectocides for sheep (sheep parasiticides)

56. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the supply of endoparasiticides and endectocides for sheep (**sheep parasiticides**) in Australia. The ACCC is concerned that the proposed acquisition will remove one of Zoetis' closest competitors, and that, post-acquisition, Zoetis will control two of the three sheep parasiticides that are most effective at managing parasiticide resistance. Further, the threat of new entry or expansion is unlikely to significantly constrain Zoetis post-acquisition. This in turn will likely lead to higher prices in this market.

57. Sheep parasiticides are used to treat and control harmful parasites in sheep. Endoparasiticides treat internal parasites, such as roundworms, tapeworms and flukes. Endectocides treat both internal parasites and external parasites, such as flies, ticks, lice and mites. Sheep parasiticides are commonly administered via drenching (oral injection) and can also be administered by subcutaneous (under the skin) injection or applied topically, depending on the product. Sheep parasiticides are OTC products available without a prescription and are commonly sold to farmers by agricultural rural resellers, although vets may also provide product selection advice to farmers.

58. Parasites may develop resistance to a particular parasiticide over time, as the proportion of parasites in the population that can tolerate otherwise lethal doses of active ingredients increases through reproduction.

59. The ACCC understands that some resistance-prone parasites are found throughout Australia, and others are found in certain locations. Although resistance-prone parasites may not always impact every location throughout Australia, when they do appear, they can be highly detrimental to a sheep population unless treated by an effective parasiticide.

Zoetis and Jurox are likely to be close competitors

60. The ACCC's investigation indicates that Jurox's Q-drench product and Zoetis' Startect product compete closely and are two of the most effective parasiticides at managing resistance, and are marketed as such.[3] Market feedback indicates that these products are significantly more effective than nearly all other products against certain resistance-prone parasites.

    a) Q-drench has four active ingredients, including Closantel which is particularly effective against barber's pole worm. Market feedback indicates that Q-drench is the only parasiticide combining four actives, and most other combination parasiticides do not have the same effectiveness against parasite resistance.

    b) Startect is a newer product with a unique combination of two active ingredients, including the newer active, Derquantel. Market feedback indicates that Startect is particularly effective against parasite resistance because of this newer combination.

---

3 See Zoetis, 'Solutions for sheep parasites', 2018, accessed 16 February 2022; Jurox, 'Q-drench', 2022, accessed 16 February 2022.

Limited competitive constraint from alternative suppliers

61. Market feedback indicates that the only other supplier with a product likely to have a similar level of effectiveness against parasite resistance is Elanco, with its Zolvix and Zolvix Plus products. Zolvix contains a newer active ingredient, Monepantel, which has not yet shown signs of significant resistance.

62. The ACCC's investigation indicates that other suppliers, such as Virbac, Boehringer Ingelheim and MSD, offer parasiticides with two or three active ingredients. However, market participants consider that they are not as effective as Q-drench and Startect, because parasite populations have developed greater resistance to their ingredients in many locations. As such, these products are unlikely to be close substitutes for Q-drench or Startect.

63. The ACCC understands that there are many other generic parasiticide products, which tend to contain one or two active ingredients that are no longer on patent. Market feedback indicates that these products are not as effective compared to the Q-drench, Startect and Zolvix products because of the resistance that develops over time and as such, are not close substitutes for these products.

64. The ACCC understands that farmers often rotate between different products and active ingredients (or classes of actives) to help manage the development of resistance. Market feedback indicates that products such as Q-drench and Startect are likely to be included in most rotations, particularly in locations where, and at times when, resistance-prone parasites are more prevalent.

65. As such, alternative suppliers and products are unlikely to provide a meaningful competitive constraint on Zoetis post-acquisition, especially for farmers that require parasiticides that are particularly effective at managing parasiticide resistance.

New entry or expansion is unlikely

66. The ACCC's preliminary view is that the threat of new entry or expansion to supply products that compete sufficiently closely with Q-drench or Startect to constrain Zoetis post-acquisition is unlikely. The ACCC's investigation indicates it is difficult and costly to:

    a) develop new active ingredients or combinations of existing active ingredients that are effective against parasiticide resistance and register these products with the APVMA, and

    b) manufacture effective combination parasiticides, because complex science and technology and technical expertise is required to balance or mix multiple active ingredients appropriately.

The ACCC invites comments from market participants on its concerns in relation to the supply of endoparasiticides and endectocides for sheep. In particular, market participants may wish to comment on the following:

4. The effectiveness of sheep parasiticides other than Q-drench, Startect and Zolvix, at managing parasiticide resistance.

5. The extent to which rotating between sheep parasiticides that do not include either

Q-drench or Startect effectively manages parasiticide resistance.

6. The likelihood of new entry or expansion if, post-acquisition, Zoetis increased prices for Q-drench and Startect by 5 to 10 per cent, with reference to, for example the factors at paragraph 66.

Issue that may raise concerns: five markets for the supply of various companion animal products

67. The ACCC's preliminary view is that the proposed acquisition, by removing Jurox as a close competitor to Zoetis, may substantially lessen competition in each of five markets for the supply of various companion animal products in Australia. The ACCC is concerned that post-acquisition, Zoetis may face substantially weaker competitive constraints in each market because:

    a) the proposed acquisition will result in the consolidation of the three largest suppliers to two in three markets, and of the four largest suppliers to three in the other two markets

    b) generic products provided by smaller suppliers may only provide a low level of constraint, and

    c) barriers to entry or expansion are likely to be high.

    This in turn, may lead to higher prices in each market.

Relevant markets

68. The ACCC is considering the effect of the proposed acquisition on competition for the supply of the following five companion animal products:

    a) *pre-anaesthetics and sedatives (opioids)* — administered via injection before anaesthesia is induced to calm the animal.

    b) *pre-anaesthetics, sedatives, and short-term anaesthetics (non-opioids)* — administered via injection before anaesthesia is induced and includes short-term anaesthetics that are not based on opioids.

    c) *antidotes for short-term pre-anaesthetic sedatives* — administered via injection to reverse the effects of sedation.

    d) *long-acting injectable corticosteroids* — administered mainly via injection, and sometimes orally, to suppress inflammation.

    e) *injectable penicillin* — administered via injection to treat infections caused by bacteria and organisms that are sensitive to penicillin.

69. These products are not available to consumers (pet owners) and are purchased by vets from specialty wholesalers or directly from manufacturers (see paragraphs 36-37). Vets administer these products to companion animals, for example, prior to or following a surgical procedure. Opioid products are more heavily regulated than other prescription products.

Level of competitive constraint from alternative suppliers

70. The ACCC understands that, in addition to Zoetis and Jurox, Troy Laboratories, Virbac, MSD and Norbrook supply products in one or more of the five relevant markets. The ACCC also understands that in each market, there are two or three other generic products that are either currently available or registered with the APVMA.

71. The ACCC's investigation indicates that in each of these markets, generics may not provide a material competitive constraint on Zoetis post-acquisition. Market feedback indicates that consumers can be prepared to pay what is needed for their pets, and vets prefer trusted products. However, some vets will use generics because they recognise that all registered products meet safety and efficacy requirements.

72. The ACCC is concerned that if generics only provide a low level of constraint, the proposed acquisition will reduce the number of effective competitors from:

    a) three to two in the markets for the supply of pre-anaesthetics and sedatives (opioids), antidotes for short term pre-anaesthetic sedatives, and long-acting injectable corticosteroids, and

    b) four to three in the markets for the supply of pre-anaesthetics, sedatives, and short-term anaesthetics (non-opioids), and injectable penicillin.

73. This consolidation will result in Zoetis having a relatively high market share in each market post-acquisition (estimates range from around 40 per cent to over 60 per cent). As such, the remaining alternative suppliers may not provide a strong constraint on Zoetis post-acquisition.

74. The ACCC continues to consider the extent of competitive constraint from alternative suppliers and products in each market. In particular, the ACCC understands that in addition to generics, vets may sometimes use alternative products in some of the five markets, for example:

    a) specific treatments, instead of more general anti-inflammatory long-acting injectable corticosteroids

    b) human equivalent products, instead of pre-anaesthetics and sedatives (opioids) and long-acting injectable corticosteroids designed for companion animals, and

    c) oral tablets, instead of injectable penicillin or long-acting injectable corticosteroids.

Likelihood of new entry or expansion

75. The ACCC's preliminary view is that the threat of new entry and expansion in each of the five markets on a scale sufficient to constrain Zoetis post-acquisition is unlikely in at least the short to medium term. The ACCC's investigation indicates that barriers to entry or expansion into each of these markets are likely to be high and include:

    a) time and costs to develop products and register with the APVMA

b) time and costs to establish manufacturing facilities and meet licensing requirements, and

c) technical expertise, capital-intensive technology and equipment required for the manufacturing process.

The ACCC invites comments from market participants on its concerns in relation to the five markets identified. In particular, market participants may wish to comment on the following:

For each of the five markets:

7. The extent to which generic products are viewed (by vets and consumers) as alternatives to the products of the larger suppliers, and the likelihood of switching to those generic products in response to a 5 to 10 per cent increase in the prices of Zoetis' and Jurox's products.

8. The extent to which the following are alternatives for Zoetis' or Jurox's products:

    a. human equivalent health products.

    b. orally administered products.

    c. specific treatments, for example, instead of using general anti-inflammatory corticosteroids.

9. The likelihood of new entry or expansion (including by smaller suppliers of generic products) if, post-acquisition, Zoetis increased prices for its products by 5 to 10 per cent, with reference to, for example, the factors at paragraph 75.

10. Whether large retail or vet buying groups can bypass Australian suppliers and purchase these products from overseas or support a new supplier to enter the Australian market.

Issue that may raise concern: anti-competitive bundling using Alfaxan

76. Conglomerate effects may arise from a merger where the merged entity has the opportunity to bundle or tie products in related or independent markets. Bundling or tying the sale of products is common and may be done for a variety of reasons, often without anti-competitive consequences, and may provide benefits if reduced costs are passed on through lower prices to customers. However, bundling or tying can raise competition concerns if the merged entity engages in strategies to alter its operations or product offerings to foreclose its rivals and ultimately reduce the competitive constraint they provide.[4]

77. The ACCC is considering the extent to which the proposed acquisition would increase Zoetis' *ability* and *incentive* to bundle products in a way that forecloses its

4 ACCC, 'Merger guidelines', 21 November 2008, accessed 16 February 2022, [5.20]; [5.25] - [5.27].

rivals, with the likely effect of substantially lessening competition in certain companion animal markets.

78. Zoetis is one of the largest suppliers of companion animal products in Australia. Post-acquisition, Zoetis may leverage its market power in the Alfaxan product through bundled or tied offerings with its extensive range of other companion animal products to prevent rivals in those companion animal product markets from competing on their merits.

79. For example, Zoetis could offer customers discounts or rebates on Alfaxan if they also purchase a certain volume or value of a companion animal product that Zoetis supplies in another market. This could have the effect of substantially lessening competition in the other market by limiting rivals' access to customers, thereby raising the costs and prices of rivals and/or potentially causing them to exit the market, or by deterring prospective suppliers from entering the market. Where this occurs, the competitive constraint on Zoetis would be reduced over time, allowing Zoetis to increase its prices and margins for that companion animal product.

Zoetis' ability and incentive to engage in anti-competitive bundling using Alfaxan

80. Alfaxan, produced by Jurox, is an induction agent for anaesthesia and an injectable anaesthetic for companion animals. Its key ingredient is alfaxalone. While the patent for the original Alfaxan product has expired, the patent for the Alfaxan Multidose product expires in 2032. Both Alfaxan and Alfaxan Multidose products are purchased by vets from specialty wholesalers or directly from Jurox. Post-acquisition, Zoetis may apply its direct-to-vet distribution model to the supply of Alfaxan.

81. The ACCC's preliminary view is that post-acquisition, Zoetis may have the ability and incentive to use Alfaxan (including Alfaxan Multidose) in a bundling strategy that may substantially lessen competition because:

    a) Alfaxan is likely to be a 'must-have' product for companion animal vet practices, and

    b) Zoetis will have a significantly expanded companion animal product portfolio compared to Jurox.

Alfaxan is likely to be a 'must-have' product

82. Market feedback suggests that Alfaxan is a unique must-have product for vets. Many market participants indicate that there are no alternatives to Alfaxan due to its efficacy, safety, ease of use and reputation as a well-tested and trusted product. Based on information currently available, the ACCC understands that Alfaxan accounts for approximately 85 to 95 per cent of injectable anaesthetics in Australia, and there are no generic versions available.

Zoetis' expanded companion animal product portfolio

83. Post-acquisition, Zoetis' companion animal product portfolio would expand with the addition of Jurox's products. This may increase Zoetis' ability and incentive to bundle Alfaxan with various companion animal products to substantially lessen competition in those companion animal markets. These products may include:

a) the extensive range of Zoetis' existing products in companion animal markets that are not supplied by Jurox, and/or

b) products in companion animal markets that are currently supplied by both Zoetis and Jurox, where Zoetis will have a higher or significantly higher market share post-acquisition. These markets include the same five markets where the ACCC has separate preliminary (horizontal) competition concerns (as listed at paragraph 68).

Likelihood of anti-competitive effects

84. The likelihood that any anti-competitive bundling strategies Zoetis engages in post-acquisition will substantially lessen competition in a relevant companion animal market will depend on a number of factors. These include: Zoetis' post-acquisition share of the companion animal market; the number and strength of other actual and potential competitors in those markets; the nature of firms' cost structures in those markets (including the extent of scale economies); the prevailing and potential future margins of firms operating in those markets; and the degree of coordinated behaviour firms are likely to engage in.

Conclusion

85. The ACCC's preliminary view is that post-acquisition, Zoetis may have the ability and incentive to use Alfaxan in a bundling strategy that could substantially lessen competition in certain companion animal markets. As bundling practices may not always have anti-competitive effects, the ACCC continues to consider whether Zoetis is likely to have the commercial incentive to engage in a bundling strategy and the magnitude of the competitive effects if it does.

The ACCC invites comments from market participants on whether the bundling of Alfaxan post-acquisition by Zoetis is likely to lead to a substantial lessening of competition. In particular, market participants may wish to comment on the following:

11. Whether there are any product(s) vet customers could switch to if, post-acquisition, Zoetis increased the price of Alfaxan by 5 to 10 per cent, or deteriorated delivery services for Alfaxan.

12. Which companion animal products, including products in the five markets listed at paragraph 68, would be attractive candidates for Zoetis to target with bundling or tying strategies using Alfaxan, and why.

13. How rival manufacturers of companion animal products would respond if Zoetis were to bundle the supply of Alfaxan with companion animal products, including products in the five markets listed at paragraph 68.

ACCC's future steps

86. 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 11 March 2022.

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

88. The ACCC intends to publicly announce its final view by 28 April 2022. 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.