



Public Competition Assessment

26 October 2022

Zoetis - proposed acquisition of Jurox

The ACCC's decision

1. On 15 September 2022, the Australian Competition and Consumer Commission announced its decision not to oppose the proposed acquisition by Zoetis Inc. (**Zoetis**)¹ of Betrola Investments Pty Ltd, and indirectly, Jurox Pty Ltd (**Jurox**) (the **proposed acquisition**) after accepting a section 87B undertaking to divest products supplied by Jurox (the **Undertaking**).
2. Section 50 of the *Competition and Consumer Act 2010* (the **Act**) prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market. The ACCC considers that the proposed acquisition, in the absence of the Undertaking, is likely to have the effect of substantially lessening competition in contravention of section 50. However, the ACCC considers that the Undertaking offered by Zoetis will address the ACCC's competition concerns in this matter.
3. The ACCC considers that, without the Undertaking, the proposed acquisition would be likely to substantially lessen competition in the supply of:
 - a) intramammary antibiotics for lactating cows
 - b) intramammary antibiotics for dry cows, and
 - c) teat sealants for cows.
4. The ACCC considers that in each of these markets, Jurox is one of Zoetis' closest competitors, that there is a high degree of market concentration with few alternative suppliers, and that barriers to entry and expansion are high. Zoetis offered the Undertaking to address the ACCC's competition concerns in these markets.

¹ The acquisition is occurring through its wholly owned subsidiary, Zoetis Australia Research and Manufacturing Pty Ltd.

5. The ACCC has concluded that the proposed acquisition would not have the effect, or be likely to have the effect, of substantially lessening competition in any other market, including the supply of:
 - a) endoparasiticides and endectocides for sheep, and
 - b) companion animal products in the following five areas:
 - o opioid-based pre-anaesthetics and sedatives
 - o non-opioid-based pre-anaesthetics, sedatives and short-term anaesthetics
 - o antidotes for short-term anaesthetics and sedatives
 - o long-acting injectable corticosteroids, and
 - o injectable penicillin.
6. The ACCC also considered the potential impacts on competition if Jurox's Alfaxan product was to be bundled with Zoetis' existing products.
7. This Public Competition Assessment outlines reasons for the decision by the ACCC not to oppose the proposed acquisition, taking into account the Undertaking.
8. ACCC public competition assessments are subject to the following qualifications:
 - a) 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.
 - b) As assessments are relatively brief and do not refer to confidential information, assessments do not necessarily set out all of the issues and information considered by the ACCC.

The parties and the proposed transaction

Zoetis

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

Jurox

11. 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,

veterinarians and pet owners. Jurox's products are marketed in over 20 countries, and most are manufactured at Jurox's plant in Rutherford, New South Wales.

The proposed transaction

12. Zoetis Australia Research and Manufacturing Pty Ltd, a wholly owned subsidiary of Zoetis Inc., proposes to acquire 100 per cent of the issued share capital of Betrola Investments Pty Ltd, including its wholly owned subsidiary, Jurox.

Market inquiries

13. The ACCC conducted market inquiries with a range of industry participants, including veterinary practitioners, parasitologists, wholesalers, resellers, distributors, veterinary buying groups, competitors, potential competitors, input suppliers, industry bodies, other regulatory agencies and other interested parties.
14. The ACCC consulted on both the substantive competition issues and the Undertaking.

Industry background

15. On 17 February 2022, the ACCC published a Statement of Issues,² which included information (paragraphs 20-37) about the animal health industry in Australia regarding:
 - a) the categorisation of production animals (livestock) and companion animals
 - b) differences in the supply of prescription and over-the-counter (**OTC**) products
 - c) the Australian Pesticides and Veterinary Medicines Authority (**APVMA**) licensing requirements for manufacturers
 - d) pioneer and generic products
 - e) the registration of animal health products with the APVMA
 - f) animal health product suppliers in Australia, and
 - g) key customers in Australia.

Market definition

16. The ACCC's starting point for considering which markets will be affected by a proposed acquisition is to identify the areas of overlap between the products and/or services actually or potentially supplied by the merger parties. The ACCC then considers other actual or potential suppliers of those products and/or services, as well as what other products and/or services constitute sufficiently

² See ACCC, [Zoetis Australia Research and Manufacturing Pty Ltd – Betrola Investments Pty Ltd \(including Jurox Pty Ltd\)](#).

close substitutes to provide a significant source of constraint on the merged entity.

17. In this matter, the ACCC focused its consideration on the markets for each of the 9 key areas of overlap separately. **Table 1** contains a product list for these areas of overlap.

Table 1: Significant areas of overlap between Zoetis and Jurox

Product area	Category	Zoetis products	Jurox products
Intramammary antibiotics for lactating cows	Livestock	Clavulox LA	Ampiclox LC
		Mastalone	Maxalac LC
		Orbenin LA	
Intramammary antibiotics for dry cows	Livestock	Orbenin Enduro	Ampiclox DC
			Juraclox LA
			Maxalac DC
Teat sealants	Livestock	Teatseal	U-Seal
Endoparasiticides and endectocides for sheep	Livestock	Startect	Napfix
		Sheepguard Oral Drench	Paramectin
		Sheepguard long acting injection	Pentamox
			Q-drench
Opioid-based pre-anaesthetics and sedatives	Companion animals	Torbugesic	Buprelieve
			Butordyne
			Methodyne
Non-opioid-based pre-anaesthetics, sedatives and short-term anaesthetics	Companion animals	Domitor	Dexdomitor
			Medetate
Antidotes for short-term pre-anaesthetic sedatives	Companion animals	Antisedan	Antipam
Long-acting injectable corticosteroids	Companion animals	Depo-Medrol	Triamolone-Forte
Injectable penicillin	Companion animals	Clavulox Ready to use injection	Moxylan long acting injection
			Moxylan ready to use injection

Competition analysis in respect of the supply of intramammary antibiotics for lactating cows, intramammary antibiotics for dry cows and teat sealants

Relevant markets

18. For the purpose of analysing the proposed acquisition, the ACCC considers that the supply of intramammary antibiotics for lactating cows, intramammary

antibiotics for dry cows and teat sealants for cows each form separate, national markets.

19. **Intramammary antibiotics for lactating cows** are prescription-only products prescribed by veterinarians 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.
20. **Intramammary antibiotics for dry cows** are similar to those for lactating cows, except they are formulated for cows that are between lactations.
21. **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 are OTC products that are generally available without a prescription through specialty wholesalers, rural resellers and veterinarians.

Product dimension

22. As part of its investigation, the ACCC considered the extent to which customers could switch from using intramammary antibiotics to using teat sealants in the event of a sufficient price increase. The ACCC received information that suggests that use of intramammary antibiotics is declining due to broader concerns with overuse of antibiotics in general, and that the use of teat sealants is increasing.
23. However, feedback from market participants consistently indicated that there is limited substitutability between intramammary antibiotics for lactating cows, intramammary antibiotics for dry cows and teat sealants as they are used by farmers for distinct purposes. For example, teat sealants may reduce the need for antibiotics by decreasing the risk of infection, but cannot replace antibiotics in the treatment of existing infections.

Geographic dimension

24. The ACCC also considered whether the geographic scope of the relevant markets is narrower than Australia-wide. However, the ACCC did not receive any information that suggested that suppliers or customers are limited by geographic factors in their ability to supply or acquire these products or that there are differences in the requirements of farmers and their livestock across different regions of Australia.

Market concentration and closeness of competition

25. The ACCC considers that the markets for the supply of intramammary antibiotics for lactating cows, intramammary antibiotics for dry cows and teat sealants for cows are each highly concentrated with few alternative suppliers, and that Zoetis and Jurox compete closely in each market.
26. The ACCC's investigation indicated that the proposed acquisition would result in Zoetis having a high market share in each of these three markets and 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.
27. The ACCC's investigation found that Zoetis' strong position in the three markets comes in large part from it supplying pioneer products, and the strong brand equity associated with this.
28. The ACCC found that Jurox competes closely with Zoetis despite offering a range of generic products. The ACCC's investigation indicated that product quality is important to farmers, and that quality can vary greatly between generic products and can be a meaningful point of differentiation.
29. The ACCC considers that, while alternative suppliers may offer products that are similar to Jurox's products, including other generic products, in each of the three markets, these suppliers do not provide as strong a competitive constraint on Zoetis as Jurox does. The ACCC found that, in these markets, customers often prefer Jurox products over other generics due to factors including Jurox's high-quality products (whether perceived or actual), reliable supply and Australian ownership and manufacturing.
30. The ACCC's investigation found that aside from Zoetis and Jurox there are few alternative suppliers in each of these markets. MSD, Elanco and Norbrook supply products in one or more of these markets, and some other suppliers (with very minimal market shares) also supply generic products in one or more of these markets. However, as mentioned above, the ACCC's investigation indicated that these alternative suppliers are generally not perceived as being as strong as Zoetis or Jurox. Accordingly, the ACCC considers that alternative suppliers are unlikely to provide a significant constraint on Zoetis post-acquisition.

Barriers to entry and expansion

31. The ACCC considers that the threat of new entry or expansion on a scale sufficient to constrain Zoetis post-acquisition is unlikely in each of the three markets.
32. The ACCC's view is that barriers to entry and expansion are high for intramammary antibiotics for lactating and dry cows and (although to a slightly lesser extent) teat sealants. Specifically, the ACCC's investigation found that:
- 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 APVMA regulatory requirements
 - c) the products must be produced in a sterile manufacturing facility

- d) the manufacturing process requires a high degree of technical expertise, capital-intensive technology and equipment, and
 - e) there are additional costs and time associated with the APVMA product registration process.
33. The ACCC's investigation indicated that these high costs of developing and manufacturing (either in-house or outsourced), and the relatively small size of the Australian market makes it difficult for suppliers to achieve the required economies of scale.

Competition conclusions

34. The ACCC concluded that, without the Undertaking, the proposed acquisition is likely to substantially lessen competition in each of the three markets.

Competition analysis in respect of the supply of endoparasiticides and endectocides for sheep

Relevant market

35. The ACCC considers that the relevant market includes all endoparasiticide and endectocide products for sheep (**sheep parasiticides**) supplied in Australia.
36. Sheep parasiticides are used to treat and control harmful parasites in sheep and may be administered via drenching (orally), by subcutaneous (under the skin) injection or applied topically, depending on the product. Endoparasiticides treat internal parasites, such as roundworms, tapeworms and flukes, while endectocides treat both internal parasites and external parasites, such as flies, ticks, lice and mites. Sheep parasiticides are OTC products available without a prescription and are commonly sold to farmers by agricultural resellers, although veterinarians may also provide product selection advice to farmers.
37. Parasites may develop resistance to parasiticides over time, as the proportion of parasites in the population that can tolerate otherwise lethal doses of active ingredients increases through reproduction. Some resistance-prone parasites are found throughout Australia while others are found more frequently in certain locations.
38. As part of its review, the ACCC considered whether the relevant market should be segmented into distinct geographic locations based on the prevalence of parasiticide resistance (particularly in relation to barber's pole worm).
39. Ultimately, for the purpose of assessing the proposed acquisition, the ACCC formed the view that the market for the supply of sheep parasiticides is national. The ACCC's investigation indicated that managing parasiticide resistance involves a range of complex variables, and that, while there may be some regional variances in the demand for sheep parasiticides, these are unlikely to amount to separate geographic markets.

Market concentration and closeness of competition

40. At the time the Statement of Issues was published, the ACCC considered that Zoetis' Startect and Jurox's Q-drench products were two of the three most effective products at managing parasiticide resistance, in particular in relation to barber's pole worm (the third product being Elanco's Zolvix Plus product).
41. However, further investigation strongly indicated that Zoetis' Startect and Elanco's Zolvix Plus are the two most effective products on the market for managing parasiticide resistance. These products contain the two newest active ingredients (which contain resistance breaking properties), are still on patent, and are priced significantly above other products, including Q-drench. The investigation indicated that Jurox's Q-drench is unlikely to be as effective as these two products. Q-drench is significantly older than Startect and Zolvix Plus, and resistance to closantel (the active ingredient in Q-drench that targets barber's pole worm) is starting to become widespread.
42. The ACCC's investigation found that, while Q-drench is the only product on the market with four active ingredients, it is not materially more effective at managing resistance in relation to barber's pole worm than numerous triple-active products, including Virbac's Tridectin, Boehringer Ingelheim's Triguard, MSD's Trifecta and Elanco's Pyrimide.
43. Further, the investigation found that, given the fourth active ingredient in Q-drench (closantel) targets barber's pole worm, there are many products (including the above triple-active products) that are as effective as Q-drench at managing resistance in regions where barber's pole worm is not prevalent.
44. As such, the ACCC considers that there are several alternative suppliers that will continue to provide a significant competitive constraint on Zoetis post-acquisition. Accordingly, the ACCC considers that the proposed acquisition and removal of Jurox will not significantly alter the level of competitive constraint imposed on Zoetis in the supply of sheep parasiticides.

Competition conclusions

45. The ACCC has concluded that the proposed acquisition is unlikely to substantially lessen competition in the supply of endoparasiticides and endectocides for sheep in Australia.

Competition analysis in respect of various companion animal products

46. The ACCC considered the effect of the proposed acquisition on competition for the supply of the following five companion animal product types:
 - a) opioid-based pre-anaesthetics and sedatives – administered via injection before anaesthesia is induced to calm the animal.
 - b) non-opioid-based pre-anaesthetics, sedatives, and short-term anaesthetics – 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.
47. These products are not available to consumers (pet owners) and are purchased by veterinarians from speciality wholesalers or directly from manufacturers. Veterinarians administer these products to companion animals. Opioid products are more heavily regulated than other prescription products.

Opioid-based pre-anaesthetics and sedatives

48. The ACCC was initially concerned that the proposed acquisition would reduce the largest suppliers of opioid-based pre-anaesthetics and sedatives for companion animals in Australia from three to two.
49. However, the ACCC's investigation indicated that market participants do not have significant concerns in relation to this market, and that Zoetis has a very small market presence such that the incremental increase in market share post-acquisition would be insignificant.
50. On this basis, the ACCC has concluded that the proposed acquisition would not be likely to have the effect of substantially lessening competition in the supply of opioid-based pre-anaesthetics and sedatives.

Non-opioid-based pre-anaesthetics, sedatives and short-term anaesthetics, and antidotes for short term pre-anaesthetic sedatives

51. The ACCC's investigation indicated that non-opioid-based sedatives and antidotes are related products.
52. The ACCC was initially concerned that the proposed acquisition would reduce the suppliers of non-opioid-based pre-anaesthetics and sedatives for companion animals in Australia from four to three, and the suppliers of antidotes from three to two.
53. However, following further investigation, market feedback indicated that there is a strong degree of generic competition in the supply of these products, and that Zoetis will continue to be constrained by generic manufacturers post-acquisition.
54. Accordingly, the ACCC has concluded that the proposed acquisition is not likely to substantially lessen competition in the supply of non-opioid-based pre-anaesthetics and antidotes due predominantly to the presence of generic products.

Long-acting injectable corticosteroids

55. The ACCC had preliminary concerns that the proposed acquisition would result in a reduction of the largest suppliers of long-acting injectable corticosteroids for companion animals in Australia from three to two.
56. However, there were not significant market concerns expressed to the ACCC in relation to the supply of injectable corticosteroids. Market feedback indicated that the use of injectable corticosteroids is in long-term decline and its primary use has largely been replaced by more specific treatments such as products designed to treat specific skin conditions in cats and dogs.
57. The ACCC's investigation also indicated that human health products such as Kenacort and Pfizer's Depo-Medrol (both of which are supplied by the leading veterinarian wholesalers) are alternatives to Zoetis and Jurox's products and are likely to provide a competitive constraint on Zoetis post-acquisition.
58. Accordingly, the ACCC has concluded that the proposed acquisition is not likely to substantially lessen competition in the supply of long-acting injectable corticosteroids for companion animals as suppliers of specific treatments and human products are likely to provide meaningful competitive constraints on Zoetis post-acquisition.

Injectable penicillin

59. The ACCC was initially concerned that the proposed acquisition would result in a reduction of the suppliers of injectable penicillin for companion animals in Australia from three to two.
60. However, the ACCC's investigation indicated that there are a number of other competitors in the market who would continue to act as a constraint on Zoetis post-acquisition. Market feedback indicated that, in most instances, there is a wide variety of alternative products available (in particular, oral penicillin), and that injectable penicillin is only used in rare cases, such as the treatment of tetanus.
61. Further, the ACCC considers that Zoetis and Jurox are not particularly close competitors as market feedback suggested that their products have different primary uses and are only partially substitutable. Zoetis' Clavulox injection is specifically for companion animals, while Jurox's Moxylan product is primarily for livestock, although it can be used on companion animals.
62. Accordingly, the ACCC has concluded that the proposed acquisition is not likely to substantially lessen competition in the market for the supply of injectable penicillin for companion animals as there are sufficient alternatives available that will impose a competitive constraint on Zoetis post-acquisition.

Competition analysis in respect of anti-competitive bundling using Alfaxan

63. The ACCC also considered whether the proposed acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any

relevant market due to the bundling by Zoetis of Jurox's Alfaxan product with or including Zoetis' existing products.

64. Alfaxan is a popular induction agent for anaesthesia and an injectable anaesthetic for companion animals. The ACCC's investigation indicated that Alfaxan accounts for approximately 85 to 95 per cent of injectable anaesthetics administered by veterinarians in Australia, and that there are no generic versions available.
65. The ACCC considered whether, after the proposed acquisition, Zoetis would have the ability and incentive to bundle Alfaxan with products in Zoetis' existing range, and whether any bundling strategy would be likely to result in a substantial lessening of competition in any market.
66. The ACCC focused its review on the products it considered would be most likely to be used by Zoetis in a bundling strategy alongside Alfaxan. These products included Zoetis' products in the five companion animal areas of overlap discussed in the section above (**overlapping products**), as well as the following four products for which Jurox does not have an equivalent offering (**non-overlapping products**):
 - a) Apoquel and Cytopoint – for the treatment of itching associated with allergic or atopic dermatitis in dogs.
 - b) Cerenia – for the treatment or prevention of nausea and vomiting in dogs and cats.
 - c) Convenia – a broad-spectrum antibiotic for the treatment of skin infections, dermatitis and urinary tract infections in dogs and cats.
67. The ACCC focused its review on the likelihood and impact of the merged Zoetis business offering discounts on Alfaxan on the condition that customers also acquired other Zoetis products. The ACCC considered whether Alfaxan would provide Zoetis with the ability and incentive to foreclose rival suppliers, and whether such a strategy could foreclose a sufficient share of any market.
68. For the overlapping products and Cerenia, the ACCC's investigation indicated that even if Zoetis had the incentive and ability to bundle Alfaxan, such a strategy would be unlikely to foreclose rival suppliers of these products. This was because a bundling strategy would be unlikely to reduce the scale and hence production efficiency of Zoetis' competitors.
69. The ACCC's investigation also indicated that Zoetis would not have the incentive to engage in a bundled discount strategy for Alfaxan with Apoquel and Cytopoint. This was because the patents of these products have recently expired and, in the face of expected generic entry, it would likely be prohibitively expensive for Zoetis to provide sufficient bundled discounts on Alfaxan to deter or hinder new entrants.
70. Further, the investigation indicated that Zoetis was unlikely to have the incentive to bundle Alfaxan with Convenia. This was because Convenia is not typically the first choice of treatment by veterinarians and is unlikely to be promoted in this manner by Zoetis. Further, if Zoetis did bundle Alfaxan with this product, the

ACCC's investigation indicated that this would not be likely to substantially lessen competition in any market.

The Undertaking

71. In order to address the ACCC's competition concerns in relation to the supply of intramammary antibiotics for lactating cows, intramammary antibiotics for dry cows and teat sealants for cows, Zoetis offered the Undertaking pursuant to section 87B of the Act. The ACCC spoke to a range of market participants for feedback on the Undertaking, including potential purchasers.
72. The ACCC considers that the Undertaking will address its competition concerns with the proposed acquisition as it requires Zoetis to divest all of Jurox's products in the markets of concern to an ACCC-approved purchaser.
73. A copy of the Undertaking is available on the ACCC mergers register and undertakings register. A brief summary of the Undertaking is set out below:
 - a) Zoetis will divest the following products which are currently supplied by Jurox (the **Divestiture Products**) to an ACCC-approved purchaser:
 - o Ampiclox LC and Ampiclox DC
 - o Juraclox LA
 - o Maxalac LC and Maxalac DC, and
 - o U-Seal.
 - b) At the time the Undertaking was accepted, the ACCC approved AVet Health Pty Ltd (**AVet**) as the Approved Purchaser of the Divestiture Products.
 - c) The divestiture includes the non-exclusive right to manufacture the Divestiture Products, and the exclusive right to market and supply the Divestiture Products in Australia.
 - d) The divestiture will include all necessary assets comprising of intellectual property rights, regulatory approvals, data, customer records, business records, inventory, contracts and promotional material which relate to the Divestiture Products in Australia.
 - e) At the option of the ACCC-approved purchaser, Zoetis must:
 - o supply any technical assistance
 - o transfer necessary personnel
 - o ensure the continued supply of goods and serviceswhich are necessary for the operation of the Divestiture Products, and which are required by the purchaser to establish itself as a competitor in the relevant markets.

- f) Zoetis must appoint an ACCC-approved Independent Manager to manage the Divestiture Products from completion of the proposed acquisition until divestiture of the Divestiture Products.
- g) Zoetis must appoint an ACCC-approved Independent Auditor to audit Zoetis' compliance with the Undertaking.

Conclusion

- 74. Based on the above analysis, the ACCC concluded that the proposed acquisition of Jurox by Zoetis, in the absence of the Undertaking, would be likely to have the effect of substantially lessening competition in the supply of intramammary antibiotics for lactating cows, intramammary antibiotics for dry cows and teat sealants for cows.
- 75. However, the ACCC considers that the Undertaking addresses the competition concerns raised such that the proposed acquisition would not be likely to have the effect of substantially lessening competition in any market in Australia.