IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No. 4 of 2013

RE: APPLICATION BY MURRAY GOULBURN CO-OPERATIVE CO LIMITED FOR MERGER AUTHORISATION

BY: MURRAY GOULBURN CO-OPERATIVE CO LIMITED

Applicant

SUBMISSION BY WARRNAMBOOL CHEESE AND BUTTER FACTORY COMPANY HOLDINGS LIMITED

Introduction

1. Warrnambool Cheese and Butter Factory Company Holdings Limited (WCB) is presently the subject of three competing takeover bids.

2. The first bid was announced by Bega Cheese Limited (Bega) on 12 September 2013. It was an unsolicited cash and scrip offer for WCB involving a scrip component of 1.2 Bega shares and a cash component of $2 for each WCB share. The offer had a number of conditions, including clearance from the Australian Competition & Consumer Commission (Commission) (which was ultimately received on 30 October 2013). The Board of WCB on 26 September 2013 unanimously recommended that WCB shareholders reject Bega's offer. On 14 November 2013, Bega issued a revised offer in which it increased the scrip component from 1.2 to 1.5 Bega shares and which it declared unconditional and its final offer. Bega has announced that its offer will not be extended and will close on Friday 20 December 2013.1

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1 Bega ASX Announcement dated 18 December 2013.

Filed on behalf of Warrnambool Cheese and Butter Factory Company Holdings Limited

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3. The second bid was announced by Saputo Inc. (Saputo) on 8 October 2013. It was an all cash off-market takeover offer of $7 per share which was agreed with the Board of WCB and conditional on a number of matters, including foreign investment approval (which was ultimately received on 12 November 2013). The Board of WCB on 8 October 2013 unanimously recommended that WCB shareholders accept Saputo’s offer, in the absence of a superior proposal. Saputo subsequently increased its offer to $8 (on 24 October 2013) and later to $9 (on 15 November 2013). On 25 November 2013, Saputo announced a potential further increase to the value of its offer of $0.20 per share (i.e. $9.20 per share) if Saputo achieved a relevant interest in WCB shares of greater than 50% during the offer period. Saputo also declared its offer unconditional. The Board of WCB on the same day unanimously recommended that WCB shareholders accept Saputo’s amended increased offer, in the absence of a superior proposal. On 17 December 2013 Saputo announced, in accordance with undertakings given to the Takeovers Panel, a final revised offer with an additional potential $0.20 per share (i.e. $9.40 per share) if Saputo achieves a greater than 75% relevant interest in WCB shares and a final $0.20 per share (i.e. $9.60 per share) if Saputo achieves a greater than 90% relevant interest in WCB shares. Saputo also announced that its offer was closing on 10 January 2014 subject to any extensions made in accordance with the Corporations Act 2001 (Cth) (Corporations Act).

4. The third bid was announced by Murray Goulburn Co-Operative Co Limited (the Applicant in this proceeding) (Applicant) on 18 October 2013. It was an unsolicited cash off-market takeover offer of $7.50 per share, conditional amongst other things on either no objection from the Commission or authorisation from the Australian Competition Tribunal (Tribunal). On 13 November 2013, the Applicant announced a revised offer of $9 per share. The Applicant further revised its offer on 28 November 2013 to $9.50 per share. The Board of WCB has advised its shareholders to take no action in relation to the Applicant’s further revised offer (on 28 November 2013). On 29 November 2013, the Applicant applied to the Tribunal under s 95AU of the Competition and Consumer Act 2010 (Cth) (CCA) for an authorisation under s 95AT of the CCA for the Applicant to acquire the shares in the capital of WCB (Application).²

² The effect of such an authorisation, if granted by the Tribunal, would be that the Applicant would not be prevented from acquiring WCB shares by s 50 of the CCA: s 95AT(2) of the CCA. The Tribunal may grant an authorisation subject to conditions, including a condition that the Applicant must make and comply with an undertaking to the Commission under s 87B of the CCA: s 95AZJ of the CCA.
5. WCB as an intervener in this proceeding will continue to keep the Tribunal promptly informed as to any developments relevant to the various bids, including any change in the recommendations to WCB shareholders.

6. The directors of WCB, as fiduciary agents, are obliged to inform themselves to ensure that any recommendation they make to WCB shareholders has a proper basis and provides shareholders with enough information to make an informed assessment for the purpose of deciding whether to accept any of the offers which have been made to them.

7. WCB seeks to ensure that there is an informed determination of the Application, including in particular on the existence and extent of any net public benefits. The Applicant is holding out claimed public benefits as the principal reason for the Tribunal to authorise the proposed takeover. The existence and extent of any net public benefits is particularly relevant to the decision of the Tribunal on this Application and to existing supplier shareholders of WCB on the question of whether to accept the Applicant's offer for their shares in WCB.

8. In this submission, WCB addresses some of the key issues and factual matters relevant to the determination by the Tribunal of the Application. In accordance with the directions made by the Tribunal on 9 December 2013, the submission follows the numbering and headings set out in Tribunal's Provisional Issues List dated 11 December 2013 (Provisional Issues List).

Overview of WCB business, operations and strategic initiatives

9. WCB is located at Allansford in south west Victoria and has been producing dairy products for over 125 years.

Milk collection

10. WCB has over 570 milk suppliers, providing almost 900 million litres of milk each year. Milk is collected from farms on a daily basis with a modern fleet of milk tankers.

11. The tables below summarises WCB's total milk intake and number of suppliers since 2002, and demonstrates the growth in milk intake by WCB over that period.

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3 *Mills v Mills* (1938) 60 CLR 150 at 185 per Dixon J (as his Honour then was).

4 See, e.g. *Tully Sugar Limited* [2009] ATP 26 at [52]-[54]; *Tully Sugar Limited 01R* [2010] ATP 1 at [16] (and see generally ss 638, 644 of the *Corporations Act 2001* (Cth)).

5 See WCB Target Statement (Bega Offer), section 5.
### Manufacturing

12. WCB owns and operates a dairy production plant at Allansford. The Allansford site, which covers approximately 17 hectares, comprises separate manufacturing facilities for cheese, milk powders, whey protein concentrate, butter, cream and packaged milk. The Allansford site also includes speciality facilities to manufacture galactooligosaccharides (GOS) for the purposes of WCB’s Great Ocean Ingredients joint venture with Royal FrieslandCampina. WCB also operates a specialty cheese plant in Mil Lel, just north of Mt Gambier, in South Australia.

13. WCB’s plant in Allansford is one of Australia’s largest, most diverse and efficient dairy plants. WCB’s single site and diversity of operations enables WCB to optimise its product mix and operate one of the highest utilised dairy manufacturing plants in Australia.

14. Production capabilities at Allansford and Mil Lel have been enhanced and upgraded in recent years to reflect strategic initiatives being pursued by WCB (for example, the Great Ocean Road arrangements with Coles), to accommodate increased demand for various products and to improve efficiency. For example, the cheese plant at Allansford was refurbished and renewed as part of a major upgrade in 1993 and has since been further upgraded, including in 2005, to improve efficiency and increase capacity.
15. WCB produces a total of over 130,000 tonnes of dairy products per year that are sold in Australia and to various customers from over 40 countries around the world.

**Business activities - Ingredient dairy products**

*Cheese (Bulk)*

16. The majority of cheese produced by WCB is of a dry salted cheddar type. WCB produces a wide range of cheddar varieties with differing characteristics such as low fat cheddar, skim, gouda, romano and emmental among others. The cheddar cheese manufactured at the Allansford site is sold in bulk 20 kilogram form to wholesale customers in Australia (including Lion Dairy & Drinks Pty Ltd *(Lion)*) and on the international market, and packaged into WCB's specialty cheese range at the Mil Lel site. Approximately 40% of the cheese production is exported to such countries and regions as Japan, Korea, the Middle East, the United States, Europe and South East Asia.

*Skim Milk Powder*

17. WCB produces low heat, medium heat and high heat skim milk powder. Skim milk powder is used in re-combined milk, bakery products, confectionery, infant formula and dairy desserts such as yoghurts and ice-cream. Almost all of the milk powder manufactured by WCB is sold on the international market. The major markets to which milk powders are exported include the Middle East, Japan, China, Europe, South East Asia and South America.

*Butter and Cream*

18. WCB's butter plant produces a variety of products including salted butter, unsalted butter and butter blends with sugar, flour and oils for use in bakery products, biscuit making and confectionery. Butter products are generally sold to wholesalers in Australia and also on the international market. The countries and regions to which butter products are exported include Japan, Korea, the Middle East, Russia, the United States, South East Asia and Europe.

19. Cream products are either sold as fresh cream to local customers or frozen to the export market.

*Whey Protein Concentrate*

20. WCB's whey protein concentrate plant utilises sophisticated membrane technology to extract protein from whey which is generated from WCB's cheese manufacturing process. The protein concentrate is then transformed into whey protein concentrate
powder composed of 80% milk protein. This powder is used in health products, sports drinks, nutritional health bars, as a binding ingredient in food processing and as a meal replacement or supplement. Most of this product is exported, with major customers located in Japan, China and the United States.

Business activities - Consumer products

Sungold milk

21. Sungold milk is the brand under which WCB sells packaged fresh and flavoured milk products through various channels for consumption by retail consumers.

Great Ocean Road products

22. WCB’s brand of Great Ocean Road cheese and milk is available exclusively through Coles supermarkets. Great Ocean Road cheese is available in five block varieties (Vintage, Extra Tasty, Tasty, Light and Colby Cheddar) and two types of shredded cheese (Tasty and Light Cheddar). Great Ocean Road milk is available in full cream, low fat and no fat, as well as chocolate and iced coffee flavours.

Warrnambool Cheddars

23. WCB produces and packages its brand of cheese, named Warrnambool Cheddars. This includes a black label vintage cheddar and a red label matured cheddar. While the bulk cheddar is made at Allansford, the flavour additions and packaging for this label is completed at the Mil Lel plant in South Australia. Warrnambool Cheddars can be found in select IGA stores, select Woolworths stores in regional Victoria, at Thomas Dux grocers and at Cheese World in Allansford, Victoria.

Enprocal

24. Enprocal is a specially formulated high energy, high protein supplement for people experiencing difficulties meeting their nutritional requirements or maintaining weight due to medical conditions, including conditions commonly found in the elderly. Enprocal is gluten free, easy to use and can be added to most foods and beverages.

Business activities - Great Ocean Ingredients Joint Venture

25. WCB has a strong history of innovating (either stand alone or with partners). An example of this is the Great Ocean Ingredients joint venture.

26. WCB and Royal FrieslandCampina of the Netherlands entered into the 50:50 Great Ocean Ingredients joint venture in 2007 to construct, at WCB’s site at Allansford, a new $75 million plant to produce GOS. Using innovative and patented technology drawn
from the expertise of Royal Friesland Campina (which is ranked 4th on the Rabobank Top 20 list of the world's largest dairy companies), this venture uses WCB's whey ingredients to be processed into nutritional and functional ingredients, such as Vivinal GOS (a prebiotic ingredient containing galacto-oligosaccharides). This ingredient is used largely in infant formula and also has application in other products.

Exports

27. Exports comprise a significant proportion of WCB's sales. WCB exports to Asian markets, the Middle East, the United States, Europe and South America.

28. WCB's largest export market is Japan, where it operates a sales and marketing joint venture with exclusive distribution rights for WCB products in the Japanese market. WCB Japan (WCBJ) operations have recently been expanded to include distribution agreements for non-competing products from select non-Australian dairy manufacturers. This initiative has seen the development of business in new categories such as cheese powders from France and protein products from New Zealand. Expanding the WCBJ range of products available for Japan complements and enhances the existing business by providing customers with a broader portfolio of product and positions WCBJ as a specialised supplier of dairy ingredients to the Japanese markets.

Strategic initiatives

29. In addition to the initiatives outlined above, WCB continues to undertake a range of other business improvement initiatives. Some short and medium term initiatives include:

(a) rolling out growth plans for Great Ocean Road branded cheese and fresh milk supply in Coles supermarkets;

(b) expanding an existing exclusive supply agreement with Mitsubishi Corporation to produce high specification milk powders;

(c) with a view to taking advantage of Asia’s strong demand for infant formula, entering into arrangements with The Tatua Cooperative of New Zealand (Tatua) to enhance WCB’s future production and marketing of lactoferrin (a functional ingredient in premium infant formulations). Specifically WCB and Tatua have entered into a technology and services agreement, under which Tatua will license WCB to use its intellectual property in relation to the extraction and processing of lactoferrin from milk. WCB is currently constructing a new lactoferrin plant at its Allansford site, with Tatua providing
design and construction services to assist WCB in achieving optimal operating performance. Commissioning of this plant is currently being undertaken. Tatua will act as WCB's technology partner in manufacturing lactoferrin and assist WCB with sales and marketing activities;

(d) entering into an exclusive long term cream cheese manufacturing agreement with Kraft through which WCB intends to launch Sungold branded cream cheese into the export market. WCB will supply cream and milk for Kraft to manufacture the cream cheese. The targeted markets are Japan, Middle East, China, Singapore and Malaysia;

(e) developing a premium low fat cheese formulation for Kraft, which has been launched under Kraft's Livefree brand. WCB owns the intellectual property to this cheese and manufactures it for Kraft. It is the lowest fat cheese currently on the market; and

(f) undertaking a capability upgrade to enable the production of whey protein concentrate in instantised form. Instantised whey protein concentrate delivers greater application functionality for sports nutrition and infant formula customers. Supply to the market is due to commence in FY14.

30. Longer term initiatives include targeting an improved product mix to increase margins and reduce volatility relative to mainstream dairy commodities and expanding WCB's consumer products offering and contributing to an improved margin product mix.

Creation of a strategically valuable business for shareholders

31. The culmination of the activities referred to above has resulted in the emergence of a strategically valuable business with listed, and therefore liquid, securities. This strategic value is evident in the three competing takeover bids currently on foot, each at:

(a) significant premiums to the share price at which WCB shares were trading prior to announcement of the Bega takeover bid; and

(b) at bid prices per share that represent high multiples to WCB's historical earnings per share.

32. WCB has over time provided benefits to suppliers through growing its milk intake and paying a competitive milk price and to shareholders through historical payment of dividends. The majority of shareholders⁶, including supplier shareholders, now

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⁶ WCB is referring here largely to shareholders who purchased their shareholdings prior to the announcement of the Bega takeover bid.
currently have the opportunity to make a large capital gain on their investment in WCB shares if they choose to accept one of the takeover bids. The success of the WCB business model has therefore proven to be a significant vehicle for wealth creation for its suppliers and shareholders to date.

Likely future without the proposed acquisition

**Issue 1:** What is the likely future without the proposed acquisition? How should the Tribunal make this assessment in the light of competing bids to acquire WCB by Saputo and Bega?

33. The Tribunal must not grant the authorisation sought by the Applicant unless the Tribunal is satisfied in all the circumstances that the Applicant’s proposed acquisition of WCB shares would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to occur: s 95AZH of the CCA.

34. In considering the Application, the Tribunal will undertake a net public benefit assessment, comparing the anti-competitive detriment (if any) and the public benefits (if any) that will result from the proposed acquisition of shares in WCB which is the subject of the Application.

35. This requires a comparison of the relevant factual matrix that is likely to exist if the Applicant's proposed acquisition of a majority or all of WCB shares occurs, against the factual matrix that is likely to exist if the acquisition of a majority or all of those shares does not occur. It has become conventional in competition law proceedings of this kind to refer to the likely factual matrix in the future with the proposed acquisition as the *factual* and the likely factual matrix in the future without the proposed acquisition as the *counterfactual.* WCB adopts that convention in this submission.

36. Where there is more than one distinct set of factual circumstances that could arise it is sometimes convenient to consider more than one potential counterfactual, if necessary giving appropriate weight to the potential counterfactuals according to their respective likelihoods. It is also sometimes necessary to identify more than one potential factual and give appropriate weight to the factual that is more likely. This is a case in which there are a number of possible factuals and counterfactuals. Proper identification of the relevant factual(s) and counterfactual(s) and the relative weights to be given to each of them is likely to be especially relevant in this matter.

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The relevant factual(s)

37. The following facts are relevant to identification of the appropriate factual(s):

(a) the Applicant's takeover offer is, inter alia, subject to a greater than 50% minimum acceptance condition, which the Applicant has stated will not be waived without the consent of its financiers\(^8\) \textit{(minimum acceptance condition)}\(^9\);

(b) under the Corporations Act compulsory acquisition can occur only if a shareholder owns 90% or more of the issued share capital in a publicly listed company\(^10\);

(c) as at 18 December 2013, the significant holders of \textit{relevant interests} in WCB shares include, inter alia, the following:

(i) the Applicant: 17.66%;

(ii) Bega: 18.71%;

(iii) Saputo: 16.92%;

(iv) Lion: 9.9%;

(d) each of the significant holders identified in (c) above is engaged, or intends to be engaged, in the sectors of the Australian dairy industry which are the subject of this application;

(e) the Saputo bid remains open for acceptance and, subject to any extensions the offer period under this bid will expire on 10 January 2014;

(f) the offer period under the Bega bid is scheduled to expire on 20 December 2013, subject to any further extensions.

38. These shareholdings may change during or after the course of this proceeding, including as a result of any of the significant holders outlined in 37(c) above selling their shares and/or the level of acceptances received into the takeover offers from the Applicant, Bega or Saputo.

39. The level of the Applicant's shareholding in WCB at the expiry of the offer period under its bid might be:

(a) the same as or greater than\(^11\) its existing shareholding but not greater than 20%;

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\(^8\) See MG Bidder's Statement.

\(^9\) See paragraph 9.7(c) of the MG Bidder's Statement.

(b) greater than 50% but less than 90% (MG Partial Ownership); or

(c) greater than 90%, in which case the Applicant has stated it will proceed to compulsory acquisition and should reach 100% subject to no successful objection being made to stop that compulsory acquisition (MG Full Ownership).

40. For the purposes of assessing competitive effects and public benefits, there are therefore two possible factuals that can be identified for the purpose of the Application:

(a) MG Partial Ownership; and

(b) MG Full Ownership.

41. Some of the relevant features of these two factuals are summarised in the following table:\(^\text{12}\):

<table>
<thead>
<tr>
<th>Features</th>
<th>MG Partial Ownership</th>
<th>MG Full Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>MG shareholding in WCB</td>
<td>Between 50% and 90%</td>
<td>100%</td>
</tr>
<tr>
<td>WCB remains a separately listed company, subject to ASX Listing Rules</td>
<td>Yes, subject to meeting ASX Listing Rule requirements and ASX not delisting WCB at the request of the Applicant</td>
<td>No</td>
</tr>
<tr>
<td>WCB directors required to act in best interests of WCB and its shareholders as a whole</td>
<td>Yes</td>
<td>Yes, but only one shareholder</td>
</tr>
<tr>
<td>Interests of minority shareholdings relevant to ability to implement integration of assets and operations of Applicant and WCB</td>
<td>Yes</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Applicant and WCB related bodies corporate for purposes of CCA and Corporations Act</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Able to change constitution of WCB and pass special resolutions</td>
<td>Only if shareholding is greater than 75% and no conflict or voting exclusion under ASX Listing Rules or Corporations Act prevents Applicant from</td>
<td>Yes</td>
</tr>
</tbody>
</table>

\(^{11}\) Assuming the Applicant does not either sell down its existing shareholding on or off market during this period.

\(^{12}\) WCB notes that the Applicant states, under the heading "Limitations in giving effect to intentions", in its Bidder Statement: The ability of Murray Goulburn to implement the intentions set out in this clause 6.3, will be subject to the legal obligations of WCB directors to have regard to the interests of WCB and all WCB shareholders, and the requirements of the Corporations Act and the ASX Listing Rules relating to transactions between related parties. Murray Goulburn will only make a decision on the above mentioned courses of action following legal and financial advice in relation to those requirements). See paragraph 6.3(a) of the MG Bidder's Statement.
Appoint a majority of directors to the Board of WCB | Yes\textsuperscript{13} | Yes

42. The Tribunal will need to consider both:

(a) the implications of these and other different features in assessing both potential competitive detriment (if any) and public benefits (if any); and

(b) the relative likelihoods of, and therefore the weight that should be given to, either MG Partial Ownership or MG Full Ownership as the relevant factual to be compared against the likely counterfactual(s).

43. WCB is not aware of any information which is not already in the public domain in relation to the intentions of the major shareholders to either sell, or not sell, into any of the competing takeover bids. WCB notes that each of Bega, Saputo and Lion\textsuperscript{14} currently has a shareholding capable of preventing compulsory acquisition by the Applicant and none of these parties has expressed an intention to accept the Applicant's takeover bid.

The relevant counterfactual(s)

44. The facts identified in paragraphs 37 and 38 above are also relevant to the identification of the counterfactual(s). While shareholdings may change during or after this proceeding, it appears likely that the potentially relevant counterfactual(s) include:

(a) no individual shareholder obtaining a majority interest in WCB by the expiry of all current takeover bids\textsuperscript{15} (Status Quo);

(b) Saputo obtaining greater than 50% but less than 90% of the shares in WCB (Saputo Partial Ownership); or

(c) Saputo obtaining greater than 90%, in which case Saputo has stated it will proceed to compulsory acquisition and should reach 100% subject to no

\textsuperscript{13} ASX's Corporate Governance Principles and Recommendations (ASX Recommendations) state that a majority of a listed company's directors should be independent: see recommendation 2.1. The Applicant stated in its Bidder's Statement that it will seek to appoint nominee directors broadly similar to its voting power in WCB and will consider the ASX Recommendations when determining the composition of the WCB Board: see paragraph 6.3(a) of the Bidder's Statement.

\textsuperscript{14} Although only currently owning 9.9%, this is considered sufficient in a practical sense to prevent compulsory acquisition from proceedings if Lion does not accept the Applicant's takeover bid as there is highly likely to be at least a small additional number of shareholders opposed to compulsory acquisition in the ordinary course.
successful objection being made to stop that compulsory acquisition (Saputo Full Ownership).

45. The Bega bid has been declared final and cannot be further increased.\textsuperscript{16} The bid has been open for acceptances since 20 October 2013 and in that period, Bega has acquired less than 1% of WCB’s shares. Bega has announced that its offer will not be extended and will close on 20 December 2013.\textsuperscript{17} Absent a material change in circumstances, WCB submits that the likelihood of Bega obtaining partial or full ownership of WCB is remote. Accordingly, this submission does not consider a counterfactual in which Bega obtains partial or full ownership of WCB.

46. For the purposes of assessing competitive effects and public benefits, there therefore appear to be three possible counterfactuals that can be identified for the purpose of the Application:

(a) Status Quo;

(b) Saputo Partial Ownership; or

(c) Saputo Full Ownership.

47. Some of the relevant features of these three counterfactuals are summarised in the following table:

<table>
<thead>
<tr>
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<td>WCB directors required to act in best interests of WCB and its shareholders as a whole</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, but only one shareholder</td>
</tr>
<tr>
<td>Interests of minority shareholders</td>
<td>Not applicable</td>
<td>Yes</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

\textsuperscript{15} This could include Saputo having greater than 16.9%, but less than 50% but given the Applicant has the minimum acceptance condition this implies that the Applicant would remain at its current shareholdings or not greater than 20%.

\textsuperscript{16} Bega ASX announcement dated 14 November 2013.

\textsuperscript{17} Bega ASX Announcement dated 18 December 2013.
48. The Tribunal will need to consider both:

(a) the implications of these and other different features in assessing both competitive effects analysis and claimed public benefits; and

(b) the relative likelihood of, and therefore the weight that should be given to, the Status Quo, Saputo Partial Ownership or Saputo Full Ownership as the relevant counterfactual to be compared against the likely factual(s).

49. WCB notes that each of the Applicant, Bega, and Lion currently has a shareholding capable of preventing compulsory acquisition by Saputo and none of these parties has expressed an intention to accept Saputo's takeover offer.

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18 See recommendation 2.1 of ASX Recommendations referred to in footnote 13. Saputo has stated that in these circumstances and subject to the Corporations Act and WCB constitution, it will seek to appoint a number of directors which reflects its percentage shareholding in WCB: see paragraph 3.4.2 of Saputo's bidder's statement dated 25 October 2013.

19 See recommendation 2.1 of ASX Recommendations referred to in footnote 13. Saputo has stated that in these circumstances and subject to the Corporations Act and WCB constitution, it will seek to appoint a number of directors which reflects its percentage shareholding in WCB: see paragraph 3.4.2 of Saputo's bidder's statement dated 25 October 2013.

20 Although only currently owning 9.9%, this is considered sufficient in a practical sense to prevent compulsory acquisition from proceeding if Lion does not accept Saputo's takeover bid as there is highly likely to be at least a small additional number of shareholders opposed to compulsory acquisition in the ordinary course.
**Factual/counterfactual summary**

50. The Tribunal will need to consider the relative likelihood of, and therefore the weight that should be given to:

(a) MG Partial Ownership or MG Full Ownership as the most likely future with the proposed acquisition by the Applicant (for the purposes of this submission, each a **factual** and together the **factual(s)**).

(b) the Status Quo, Saputo Partial Ownership or Saputo Full Ownership as the most likely future without the proposed acquisition (for the purposes of this submission, each a **counterfactual** and together the **counterfactual(s)**).

**Public benefits**

**Issue 2. For each of the claimed public benefits:**

(a) **What is the nature and extent of the claimed public benefit? Is it tangible, credible and real? Is it enduring and of substance?**

(b) **Is it distinct from other public benefits claimed or does it overlap with one or more of the other public benefits claimed?**

(c) **Does the claimed public benefit result from the proposed acquisition or is there a real chance that it would eventuate in the future without the proposed acquisition?**

(d) **Would the proposed acquirer or others incur costs in achieving the claimed benefit? If so, what is the magnitude of such costs?**

(e) **Has the claimed public benefit been quantified or readily capable of quantification? If the claimed public benefit has been quantified, are the methodology and assumptions that have been adopted reasonable?**

(f) **Who are the beneficiaries of the claimed public benefit? Will the benefits flow through to the broader community?**

(g) **Are there public detriments intrinsic to the claimed public benefit?**

**Introductory comments**

51. The Applicant contends that the proposed acquisition is likely to **yield substantial increases in efficiencies across many aspects of the operations of the combined business**
and that such efficiencies *underpin the public benefits* that the Applicant considers will result from the proposed acquisition.\(^{21}\)

52. It is clear from such a contention that the existence and extent of the public benefits claimed by the Applicant is premised on a factual in which the businesses, assets and operations of the Applicant and WCB are 'combined' in the sense of complete (or near complete) integration.

53. As discussed above, the possible factual(s) in which to assess the Application are MG Full Ownership and MG Partial Ownership.

54. Integration of the businesses, assets and operations of the Applicant and WCB will presumably occur under MG Full Ownership. WCB is not in a position to comment on the likely success of, or time or cost required to effect, such integration.

55. Integration in the manner generally assumed in Application is unlikely in a factual involving MG Partial Ownership. The Tribunal will therefore need to consider the extent to which public benefits based on an integrated Applicant / WCB might be achieved in a factual in which there is no certainty of integration in the manner assumed in Application.

**Comments on specific categories / types of claimed public benefits**

56. In broad terms, and reflecting the summary of the claimed public benefits in the Provisional Issues List, the Applicant contends that public benefits are likely to arise from\(^{22}\):

(a) the substantial increase to the milk pool available to the Applicant, including the following specific benefits:

(i) a reduction of incremental costs from increased milk volumes;

(ii) increased efficiency of milk collection from increased milk volumes;

(iii) increased return from processing increased milk volumes, enabling the Applicant to diversify its production capabilities for cheese and upgrade its facilities to produce more *high value* ingredients products;

(Milk Volume Benefits):

(b) securing substantial synergies and efficiency gains, including:

(i) transport and logistics efficiencies, including:

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\(^{21}\) See paragraphs 377 of the Application.

\(^{22}\) See paragraphs 377 to 410 of the Application.
(A) consolidation of milk pick up routes;
(B) administration and transport personnel;
(C) reduced transportation costs;
(D) reduced warehousing costs;
(E) increased efficiency in transportation of products;
(F) increased use of efficient technology;
(G) reduction of head count;

(ii) consolidation of production at certain plants;

(iii) sharing management and services;

(iv) further roll out of the Applicant's Operational Excellence program;

(v) procurement savings;

(vi) efficiencies derived from increased volume,

(Operational Synergy Benefits);

(c) enhancing the standing and international competitiveness of Australia’s dairy industry in global trade through the efficiencies that will strengthen Australia’s largest dairy producer, the Applicant, including the following specific benefits:

(i) assisting the Applicant to leverage its customer relationships to offer higher value products and to fully take advantage of growth in the nutritionals sector;

(ii) significantly improving the Applicant's international competitiveness via increased scale, a greater ability to diversify its production and the ability to leverage its existing relationships with premium customers to offer more innovative products;

(iii) achieving the necessary scale, market reach and efficiencies so as to capture the benefits of an historic growth opportunity for exports created by the emerging affluence of Asian consumers;

(International Competitiveness Benefits); and

(d) the likely flow on of benefits to the Applicant in returns to farmers and multiplier effects in rural communities, including (due to the Applicant’s cooperative structure) increased profitability from the proposed acquisition
leading to significantly higher milk prices for the Applicant's farmer suppliers than would otherwise be the case (**Flow On Benefits**).

57. WCB's comments on each of these four categories of benefits, and specific claimed benefits within each category, are as set out below.

**Milk Volume Benefits**

58. The Applicant contends that there will be an immediate increase of 800 million litres to the Applicant's milk pool and that the corresponding increase in milk volumes will give rise to various benefits (such as reducing incremental costs and increasing the efficiency of milk collection).  

59. In a factual involving MG Partial Ownership, it is unclear that any increase in the Applicant's milk volumes would occur, since such volumes would still accrue to WCB. Any use of WCB's milk volumes by the Applicant would be subject to agreement between the Applicant and WCB, having regard to the interests of the WCB shareholders as a whole, including the remaining minority shareholders of WCB. The Tribunal may wish to consider the likelihood and scope of the claimed public benefits being achieved in these circumstances.

60. It may be relevant for the Tribunal in assessing claimed benefits relating to milk volume to consider and compare the historical milk intake of the Applicant, WCB and other acquirers of raw milk in the relevant region. The Applicant refers to the reduction in overall milk intake in Australia since 2002. Over that period, WCB has significantly grown its milk intake to nearly 900 million litres. WCB understands that the Applicant's milk intake has declined over that period and has declined more, on average, than the industry average. The following table provides a comparison of the Applicant and WCB's milk intake over the last decade:

<table>
<thead>
<tr>
<th>Year</th>
<th>WCB Milk Intake (mlt)</th>
<th>Growth (y-o-y)</th>
<th>Applicant Milk Intake (mlt)</th>
<th>Growth (y-o-y)</th>
<th>Australian Milk Intake (mlt)</th>
<th>Growth (y-o-y)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>725</td>
<td>29.2%</td>
<td>4,130</td>
<td>21.7%</td>
<td>11,271</td>
<td>6.9%</td>
</tr>
<tr>
<td>2003</td>
<td>640</td>
<td>(11.7%)</td>
<td>3,635</td>
<td>(12.0%)</td>
<td>10,328</td>
<td>(8.4%)</td>
</tr>
<tr>
<td>2004</td>
<td>702</td>
<td>9.7%</td>
<td>3,506</td>
<td>(3.5%)</td>
<td>10,076</td>
<td>(2.4%)</td>
</tr>
<tr>
<td>2005</td>
<td>757</td>
<td>7.8%</td>
<td>3,548</td>
<td>1.2%</td>
<td>10,127</td>
<td>0.5%</td>
</tr>
<tr>
<td>2006</td>
<td>804</td>
<td>6.2%</td>
<td>3,599</td>
<td>1.4%</td>
<td>10,089</td>
<td>(0.4%)</td>
</tr>
</tbody>
</table>

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23 See paragraphs 380 to 383 of the Application.
<table>
<thead>
<tr>
<th></th>
<th>805</th>
<th>0.1%</th>
<th>3,335</th>
<th>(7.3%)</th>
<th>9,583</th>
<th>(5.0%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>853</td>
<td>6.0%</td>
<td>3,250</td>
<td>(2.5%)</td>
<td>9,223</td>
<td>(3.8%)</td>
</tr>
<tr>
<td>2008</td>
<td>928</td>
<td>8.8%</td>
<td>3,261</td>
<td>0.3%</td>
<td>9,388</td>
<td>1.8%</td>
</tr>
<tr>
<td>2009</td>
<td>896</td>
<td>(3.4%)</td>
<td>2,864</td>
<td>(12.2%)</td>
<td>9,023</td>
<td>(3.9%)</td>
</tr>
<tr>
<td>2010</td>
<td>879</td>
<td>(1.9%)</td>
<td>2,827</td>
<td>(1.3%)</td>
<td>9,101</td>
<td>0.9%</td>
</tr>
<tr>
<td>2011</td>
<td>919</td>
<td>4.6%</td>
<td>2,936</td>
<td>3.9%</td>
<td>9,480</td>
<td>4.2%</td>
</tr>
<tr>
<td>2012</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAGR (2002-12)</td>
<td>2.4%</td>
<td>(3.4%)</td>
<td>(1.7%)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Source: WCB estimates (sourced from Dairy Australia, and annual reports of WCB and the Applicant)*

61. This comparison might also examine average milk prices over this period to determine the impact of pricing on milk intake, as well as the other factors potentially affecting milk intake (for example, droughts, succession issues and the viability of farming alternatives).

62. More generally, it will be relevant to consider the fact that a change in ownership or control of WCB will not of itself lead to any increase in the total milk pool available for production. The issue is whether and to what extent the factual(s) would, relative to the counterfactual(s), be likely to result in relatively higher or lower total milk volumes.

63. In the context of milk intake and industry performance, the Application contains material which compares the performance of the New Zealand dairy industry with the Australian dairy industry, and the claimed benefits of co-operative structures (such as Fonterra). The Tribunal will need to consider the extent to which the New Zealand experience is relevant to, or can act as a predictor of, the likely future performance of the Applicant or the Australian dairy industry. This might involve a consideration of factors which may be unique to New Zealand and those which may be common to Australia and New Zealand, for example, a country's exposure to drought conditions, taxation, access to finance, and the attractiveness of dairy farming.

**Operational Synergy Benefits**

64. WCB agrees that there may be various synergy benefits potentially available through a combination of the Applicant and WCB, in particular cost savings through reductions in duplication. The Tribunal will need to consider the likelihood of the synergies being realised, the time and costs required to implement and realise those synergies, as well as the extent, quantum and beneficiaries of actual synergies realised in the likely factual(s).

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24 See for example, the Statement of Maldwyn Beniston.
65. There are several claimed public benefits in this Operational Synergy Benefits category which relate to transport and logistics efficiencies. Only the heading of each benefit is listed in the version of the Application available to WCB. While external lawyers and counsel of WCB have received access to these materials, the substantive details are redacted and cannot be accessed by WCB, and external lawyers and counsel are not in a position to make meaningful submissions as to the claimed public benefits without instructions.

66. WCB’s comments on each of these benefits reflect the limited information currently made available to it:

(a) WCB expects that the claimed consolidation of milk pick up routes benefit contemplates that overlapping milk collection routes utilised by WCB and the Applicant would be consolidated. In principle, WCB considers that cost savings can be achieved through more efficient milk pick up routes. However, it may be relevant to consider whether and to what extent this is a benefit which is merger specific or could be achieved in the counterfactual(s). For example, WCB currently has milk collection and milk swap arrangements with other acquirers of raw milk which are intended to enhance efficiencies in milk collection. It might be possible for WCB and the Applicant or another dairy processor in the relevant region (irrespective of the proposed acquisition) to enter into a milk swap arrangement or to form a joint venture to service those routes in order to achieve similar efficiencies in milk collection.

(b) WCB expects that the claimed administration and transport personnel benefit contemplates that there would be some form of consolidation or reduction in duplication with respect to the number of employees engaged in administration and transport related activities. In principle, WCB considers that some cost savings could be achieved in MG Full Ownership. In a factual involving MG Partial Ownership, it is unclear that any consolidation would occur, since a WCB which is not wholly owned by the Applicant may still require employees to carry out various administrative and transport functions. Any contemplated reduction in headcount would require agreement between the Applicant and WCB, having regard to the interests of the remaining

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25 For examples of the type and level of synergies identified by WCB as potentially arising from a combination of WCB and another dairy group, see WCB Target Statement (Bega Offer), 16.
26 See paragraphs 384 to 387 of the Application.
27 See paragraph 384(a)(1) of the Application.
28 See paragraph 384(a)(2) of the Application.
minority shareholders of WCB. Further, to the extent there is a reduction in head count, there may be public detriments intrinsic to this benefit (for example, job losses and multiplier effects associated with those losses) which should be considered by the Tribunal.

(c) WCB is not able to determine the specific nature of the claimed benefit relating to reduced transportation costs but expects that this relates to claims of cost savings that might be generated as a result of consolidation or reduction in duplication in relation to transport and logistics or combining transport fleets. In principle, WCB considers that some cost savings might be achieved in MG Full Ownership. In a factual involving MG Partial Ownership, it is unclear what if any consolidation in this respect would occur, given that any contemplated consolidation with respect to transport and logistics would also require agreement between the Applicant and WCB, having regard to the interests of the remaining minority shareholders of WCB.

(d) WCB expects that the claimed reduced warehousing costs benefit contemplates that, post acquisition, the warehousing functions and activities of the Applicant and WCB could be combined and thereby lower the costs associated with operating separate warehousing operations. In principle, WCB considers that some cost savings might be achieved in MG Full Ownership. In a factual involving MG Partial Ownership, it is unclear that any consolidation would occur, since any contemplated consolidation with respect to warehousing would require agreement between the Applicant and WCB, having regard to the interests of the remaining minority shareholders of WCB.

(e) WCB is not able to determine the specific nature of the benefit relating to increased efficiency in transportation of products.

(f) WCB is not able to determine the specific nature of the benefit relating to increased use of efficient technology.

(g) WCB expects that the claimed reduction of head count benefit contemplates that there would be some form of consolidation or reduction in duplication in the number of employees with transport and logistics functions. The Tribunal may need to assess whether there is any overlap between this and the benefit

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29 See paragraph 384(a)(3) of the Application.
30 See paragraph 384(a)(4) of the Application.
31 See paragraph 384(a)(5) of the Application.
32 See paragraph 384(a)(6) of the Application.
claimed under administration and transport personnel and whether this might constitute a public detriment intrinsic to any benefit (for example, job losses and multiplier effects associated with those losses).

67. The consolidation of production at certain plants is another form of claimed public benefit in this Operational Synergy Benefits category. Details of this benefit are redacted in the version of the Application available to WCB. WCB expects that this benefit contemplates the consolidation or reconfiguration of production at one or more of the plants or facilities operated by the Applicant and / or WCB. In principle, WCB considers that some consolidation or reconfiguration might be achieved in MG Full Ownership. In a factual involving MG Partial Ownership, it is unclear that any consolidation or reconfiguration would occur, since for example any contemplated consolidation or reconfiguration of production or closing of a WCB plant would require agreement between the Applicant and WCB, having regard to the interests of the remaining minority shareholders of WCB. To the extent that there is consolidation or reconfiguration of production and / or closure of any plants, it is possible that costs may be incurred to achieve such a result (for example, costs associated with the mothballing or sale of a plant or facilities, costs associated with reconfiguration of a plant or facilities, or the rehabilitation of a site). The Tribunal may wish to consider the existence and magnitude of such costs, and whether and to what extent these might constitute a public detriment intrinsic to any benefit (for example, job losses arising from the consolidation or reconfiguration of production and / or closure of any plants and the multiplier effects associated with those losses).

68. A specific claimed public benefit in this Operational Synergy Benefits category is sharing management and services. Details of this benefit are redacted in the version of the Application available to WCB. WCB expects that this benefit contemplates some form of consolidation of the management and related services of the Applicant and WCB and possibly a corresponding reduction in head count in those areas. This might cover areas such as management, accounting, finance, sales and marketing, operations and IT. WCB is not able to determine the extent of the consolidation (or possible reduction in head count) that is contemplated by the Applicant. In principle, WCB considers that some consolidation might be achieved in MG Full Ownership. In a factual involving MG Partial Ownership, it is unclear that any consolidation would

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33 See paragraph 384(a)(7) of the Application.
34 See paragraph 384(b) of the Application.
35 See paragraph 384(e) of the Application.
occur, since any contemplated consolidation of management and services between the Applicant and WCB post acquisition would require agreement between the Applicant and WCB, having regard to the interests of the remaining minority shareholders of WCB. To the extent that there is a proposed consolidation of the management and related services (and a corresponding reduction in head count), the Tribunal may wish to consider whether and to what extent there may be public detriments intrinsic to this benefit (for example, job losses and multiplier effects associated with those losses).

69. The further roll out of Murray Goulburns "Operational Excellence" program\(^{36}\) to address plant and operational inefficiencies is claimed as a public benefit. The Tribunal may wish to consider whether this is a public benefit and, if so, whether and to what extent this benefit is merger specific or could be achieved in the counterfactual(s). For example, WCB has had a continuous improvement program in place for the last five years. It regularly undertakes reviews of its plant and operational efficiency and seeks to identify strategies that may improve its efficiency and overcome operational problems. This would continue to occur in the Status Quo and WCB expects that this may also occur in the other counterfactual(s).

70. The Application lists procurement savings\(^{37}\) as a public benefit in this category. The Application does not provide details about the type or level of procurement savings that might be achieved if WCB's purchases were switched across to the Applicant's supply agreements and therefore WCB is not in a position to make comments in relation to these potential savings. If the Tribunal determines that such savings can be made, it may be relevant to consider whether and to what extent such a benefit would or could arise in the counterfactual(s).

71. The Application lists efficiencies derived from increased volumes\(^{38}\) as a further public benefit in this category and discusses the benefits flowing from a claimed increase to the Applicant's milk pool. WCB is not in a position to make comments in relation to these potential savings or whether this benefit is the same or incremental to the benefit claimed under the Milk Volume Benefits category.

International Competitiveness Benefits

72. The public benefits claimed in the International Competitiveness Benefits category include significantly improving the Applicant's international competitiveness through increased scale, a greater ability to diversify its production and the ability to leverage its

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\(^{36}\) See paragraph 384(f) of the Application.

\(^{37}\) See paragraph 384(g) of the Application.
existing relationships with premium customers to offer more innovative products.\textsuperscript{39} These are premised on the Applicant having significantly increased milk volumes and scale as a result of the proposed acquisition. WCB repeats its comments above in paragraphs 58 to 62 relating to milk volumes.

73. The public benefits claimed in the \textit{International Competitiveness Benefits} category also include assisting the Applicant to take advantage of growth in the nutritionals sector\textsuperscript{40}. This benefit presumes that the Applicant will, through the proposed acquisition, obtain increased milk volumes. WCB repeats its comments above in paragraphs 58 to 62 relating to milk volumes.

74. In the context of claims about an increased focus on the nutritional sector, it will be relevant for the Tribunal to consider whether and to what extent:

(a) the Applicant could, irrespective of the proposed acquisition, seek to offer higher value products and align its production to focus to a greater extent on nutritionals;

(b) milk volumes and scale are required in order to operate successfully in the nutritionals sector; and

(c) this benefit could be achieved in the relevant counterfactual(s).

75. In this respect, WCB's strategy (which would continue under the Status Quo), for example, is to continue to build a portfolio of higher margin products, including selected specific nutritional products. WCB's lactoferrin initiative with Tatua and Great Ocean Ingredients joint venture with Royal FrieslandCampina (which produces Vivinal GOS) as discussed above, are two recent examples of WCB successfully pursuing that strategy. More generally, WCB has had considerable success competing in international markets (including through its joint venture in Japan) and engaging with major global customers. For these reasons, it does not consider the claims in paragraphs 400 and 401 of the Application regarding its capabilities in international markets or with respect to the supply of nutritionals to be accurate. WCB submits that there is also no evidence to support the claim that \textit{WCB is a weak seller in the Japanese market.}

\textsuperscript{38} See paragraph 384(h) of the Application.  
\textsuperscript{39} See paragraphs 379(c), 390, 393 - 401 of the Application.  
\textsuperscript{40} See paragraphs 399 – 401 of the Application.
76. Saputo has also indicated that, under a Saputo Full Ownership counterfactual, it would explore opportunities in export markets to further develop WCB's brands and support WCB's strategy of building a portfolio of higher margin products.\(^{41}\)

**Flow On Benefits**

77. The extent and quantum of any benefits flowing through to farmers and / or the broader community more generally would be dependent on the extent to which the Applicant is able to achieve the claimed benefits. In assessing the extent and quantum of any flow-on benefits, the Tribunal might also take into account whether there are any public detriments intrinsic to those benefits (for example job losses and plant closures) and any multiplier effect or flow on effect associated with those detriments, as well as whether or not such benefits would be delivered in the counterfactual(s).

78. In the context of claims that the proposed acquisition will enable the Applicant to offer significantly higher milk prices to its farmer suppliers than it otherwise would have, it may be relevant for the Tribunal to consider and compare the Applicant's historical approach to farm gate pricing with that of WCB and other acquirers of raw milk (none of whom operate in accordance with cooperative principles) in the relevant regions. The following table provides a comparison of the Applicant and WCB’s milk prices for 2007 to present. The table presents WCB’s milk price and WCB’s estimate of the Applicant’s milk price, as well as the Applicant's milk price as set out in the Application.\(^{42}\)

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>WCB*</td>
<td>4.20</td>
<td>6.76</td>
<td>5.24</td>
<td>4.40</td>
<td>5.74</td>
<td>5.47</td>
<td>5.00</td>
<td>6.05</td>
<td>6.30</td>
</tr>
<tr>
<td>Applicant (WCB estimate)*</td>
<td>4.16</td>
<td>6.68</td>
<td>4.83</td>
<td>4.40</td>
<td>5.64</td>
<td>5.43</td>
<td>4.97</td>
<td>6.00</td>
<td>6.30</td>
</tr>
<tr>
<td>Applicant (Form S)</td>
<td>-</td>
<td>6.76</td>
<td>4.79</td>
<td>4.42</td>
<td>5.64</td>
<td>5.44</td>
<td>4.96</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

*Source: The milk price is calculated based on: (i) The publically announced milk prices of WCB and the Applicant, (ii) These prices applied to the same milk flows (being WCB’s milk flows and supplier profiles) to determine the total cost of milk under each system and (iii) This represented in $ per kg milk

\(^{41}\) Saputo, Bidder's Statement, 46.
\(^{42}\) See paragraph 352 of the Application. The Application does not include prices for 2007 or 2014 (YTD or forecast).
solids being the total cost / total milk solids (This is the weighted average milk price paid across all suppliers and can vary up to +/-10% or so for each individual supplier based on milk flows, quality etc.)

79. It is apparent from the above table that, based on WCB estimates, WCB has paid equivalent or higher milk prices than the Applicant on a $ per kilogram of milk solids basis in each year since 2007. Based on the Applicant's milk price set out in the Application, WCB has paid an equivalent or higher price on a $ per kilogram of milk solids basis than the Applicant in 2008, 2009, 2011, 2012 and 2013.

Quantification

80. In the version of the Application available to WCB, the claimed public benefits do not appear to have been quantified. WCB is therefore not in a position to comment on any quantification of public benefits or the methodology or assumptions adopted with respect to such quantification.

Issue 3. Will the proposed acquisition result, or be likely to result, in a significant increase in the real value of exports?

81. In the context of whether the proposed acquisition would result (or be likely to result) in a significant increase in the real value of exports, the Applicant contends that the proposed acquisition would assist the Applicant to leverage its customer relationships to offer higher value products and to fully take advantage of growth in the nutritionals sector.

82. WCB repeats its response to Issue 2 in paragraphs 72 to 76 above.

83. The Application states that the Applicant’s export volumes have declined over the last decade.\(^{43}\) Accordingly it may also be relevant for the Tribunal to consider the historical export performance of the Applicant as against WCB and other dairy groups. WCB estimates that it has grown its exports by approximately 60% (by volume) and 100% (by value) over this 10 year period.

Issue 4. Will the proposed acquisition result, or be likely to result, in a significant substitution of domestic products for imported goods?

84. The Applicant contends that the efficiencies and economies of scale available to the Applicant through merging with WCB will increase its domestic sales and reverse the

\(^{43}\) See paragraph 396 of the Application.
fall in milk supply and thereby lead to a significant substitution of domestic products for imported goods.\textsuperscript{44}

85. Whether the proposed acquisition leads to a significant substitution of domestic products for imported goods would be dependent on the Applicant being able to achieve the claimed benefits (particularly benefits relating to the achievement of efficiencies and greater scale) with resulting greater volume or value of domestic production than is likely to be achieved in the relevant counterfactual(s).

**Issue 5. What other matters that relate to the international competitiveness of the Australian dairy industry (or any other industry) should the Tribunal take into account in assessing the benefits to the public likely to result from the proposed acquisition?**

86. The assessment of the net public benefits involves not only a consideration of the benefits likely to be achieved in the factual(s) but also those benefits likely to be achieved in the relevant counterfactual(s).

87. In the context of the factual(s), for example, it might be relevant to consider the capital flows to WCB shareholders resulting from the transaction. To the extent those are supplier shareholders, it might be relevant to consider whether the cash consideration they receive for their shares may enhance their capacity to re-invest in milk production or processing activities with multiplier effects in local communities. The cash represents an immediate wealth transfer to WCB shareholders from the Applicant. However, it might also be relevant to consider how the corresponding level of debt / gearing that would be incurred by the Applicant in acquiring WCB (and the servicing of that debt) may impact on the Applicant's ability to pay a higher milk price, product at lower cost and / or improve its international competitiveness and the international competitiveness of the Australian dairy industry.

88. In the context of a counterfactual involving Saputo Partial Ownership or Saputo Full Ownership, for example, it might be relevant to consider the impact of the significant foreign investment likely to occur, including over $500 million (under Saputo Full Ownership) of new foreign capital that would flow from overseas into Australia, to both supplier and non-supplier shareholders of WCB. In so far as WCB shareholders are Australian, this would represent a significant immediate wealth transfer from foreign persons to Australians. To the extent such foreign capital flows to supplier shareholders and other shareholders involved in the dairy industry in Australia, it may be relevant to consider whether this enhances their capacity to re-invest in milk production or

\textsuperscript{44} See paragraph 392 of the Application.
processing activities and has multiplier effects in local communities (in particular those around Warrnambool and south west Victoria).

89. Similarly, given its likely average acquisition cost for its shareholding, if Bega was to sell into the Applicant's offer or Saputo's offer, it would receive a capital injection that might be used for re-investment in the industry. Similarly, if the Applicant were to sell into Saputo's offer, it would also receive a capital injection that might be used for re-investment in the industry.

90. It may also be relevant to consider Saputo's intentions for WCB's operations and employees (as set out in Saputo's Bidder's Statement) and therefore the benefits that may arise in a counterfactual involving Saputo Partial Ownership or Saputo Full Ownership. Saputo's stated intentions under Saputo Full Ownership include, for example:

(a) exploring opportunities in the export market to further develop WCB's brands;
(b) supporting WCB's strategy of building a portfolio of high margin products and delivering more customer specific applications; and
(c) looking to invest further to expand WCB's operations by increasing existing capacity or building additional capacity.

Saputo has stated that it does not intend to rationalise or redeploy any of WCB's fixed assets.

**Issue 6. What is the magnitude of the public benefits identified as resulting from the proposed acquisition?**

91. Based on the version of the Application available to WCB, WCB is unable to comment on the magnitude of the claimed public benefits. Please refer to its response to Issue 2 under **Quantification**.

**Issue 7. What is the impact, if any, of Murray Goulburn’s proposed capital restructure on the benefits likely to result from the proposed acquisition?**

92. WCB currently has insufficient information about the detail of the proposed capital structure to make any submission on this issue at the present time.

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45 Saputo, Bidder's Statement, 46.
46 Saputo, Bidder's Statement, 46.
Other public benefits

**Issue 8. Is there a real chance that any other public benefits will result from the proposed acquisition?**

93. WCB does not make any submissions on this issue at this time.

**Issue 9. If so, what is the nature and extent of those public benefits?**

94. Not applicable.

Public detriments

**Markets in which to assess the competitive effects of the proposed acquisition**

**Issue 10. What are the relevant markets in which to assess the competitive effects of the proposed acquisition? In particular:**

(a) **Is there a single market for acquisition of raw milk in Victoria, South Australia and the Riverina region of New South Wales? Or are there separate regional markets for the acquisition of raw milk?**

95. WCB is based at Allansford (approximately 10km east of Warrnambool) in south western Victoria. At Allansford, WCB processes raw milk to produce a range of dairy products. WCB also has a small speciality cheese cutting and wrapping plant at Mil LeL in south eastern South Australia. The plant at Mil LeL does not process raw milk.

96. Having regard to the location of its processing facility and the costs involved in the collection and transportation of raw milk, WCB sources raw milk from suppliers located in south west Victoria (stretching from the Bellarine Peninsula to the South Australian border, as well as Ballarat and the surrounding area), south eastern South Australia and central South Australia. WCB does not actively seek suppliers, including for milk swap arrangements, outside these regions.

97. In determining the scope of the market and substitution possibilities, relevant factors for the Tribunal to consider include:

(a) the distances between suppliers and processing facilities;

(b) the costs involved in transportation and collection of raw milk between suppliers and the processing facilities; and

(c) the feasibility and extent of milk swap and milk collection arrangements.

98. WCB notes the information proposed by the Commission on 13 December 2013 to be requested by the Tribunal from WCB relevant to this issue (and others, below). WCB
would endeavour to provide any such information as promptly as possible in response to a request from the Tribunal.

(b) *Is the market or markets in which dairy processors acquire raw milk from farmers distinct from the market or markets in which dairy processors supply bulk raw milk to food manufacturers? If so, what is the geographic scope of the market or markets for supply of bulk raw milk to dairy product manufacturers?*

99. In WCB’s view, any acquirer of raw milk in the regions in which WCB acquires raw milk (including the Applicant) is also a potential supplier of bulk raw milk.

(c) *Is there a single market for the supply of processed and semi-processed dairy products that is at least state wide, and is probably national? Or are there separate markets, predominantly national, for the manufacture and supply or wholesale supply of each of the following products: pasteurised milk, flavoured milk, powdered milk products, bulk cream, packaged cream, packaged and bulk cheese, packaged and bulk butter and whey products? If there are separate markets, what is their geographic dimension?*

100. WCB submits that there is certain supply side substitution with respect to the production of some (but not all) dairy products. However there is unlikely to be sufficient supply side substitutability to lead to the identification of a unified market for the supply of processed and semi-processed dairy products. It may be therefore more appropriate to identify separate products markets for discrete types of dairy products.

(d) *Is there a separate market, or markets, for the supply of high margin dairy ingredients, such as nutritional products and lactoferrin?*

101. Having regard to demand and supply side substitutability, WCB submits that there are likely to be separate markets for particular high margin dairy ingredients. For example, WCB submits that there are likely to be separate product markets for each of lactoferrin and infant formula base powder, respectively. WCB submits that defining a separate product market for *high margin dairy ingredients* is too broad to be meaningful.

(e) *Is there a market or markets for the supply of ancillary services to dairy farmers, such as sales of supplies, equipment and technical advice?*

102. Both WCB, the Applicant and other processors offer these type of ancillary services to dairy farmers, generally to enhance their relationship with their suppliers and to
improve on-farm productivity. However, many of these services are also available from persons other than dairy processors that specialise in the supply of these services.

103. WCB does not make a submission as to precise boundaries of the relevant market(s) in which such services are supplied.

The competitive effects of the proposed acquisition

Acquisition of raw milk

Issue 11. What are the nature and extent of existing rivalry or competition between Murray Goulburn and WCB in the market(s) for the acquisition of raw milk?

104. WCB submits that:

(a) in south west Victoria, WCB's two largest competitors for the acquisition of raw milk are the Applicant and Fonterra and to a lesser degree, Bega, Lion/DFMC and UDP;

(b) in south east South Australia, WCB's largest competitors for the acquisition of raw milk is the Applicant and to a lesser degree, Fonterra and UDP; and

(c) in central South Australia, WCB's largest competitors for the acquisition of raw milk are the Applicant, Lion/DFMC, UDP and Parmalat.

Issue 12. To what extent do farmers currently benefit from the price and non-price competition between Murray Goulburn, WCB and other competitors to acquire raw milk?

105. WCB provides a range of price and non price benefits to its suppliers in order to ensure it continues to offer a compelling proposition to suppliers of raw milk. As noted above, WCB has consistently offered a raw milk price that is equivalent or higher than the raw milk price offered by the Applicant since 2007.

106. The presence of other acquirers of raw milk in the markets in which WCB competes provides suppliers of raw milk with choice in respect of these price and non-price benefits.

Issue 13. Will the remaining competitors in the market(s) for the acquisition of raw milk exert a strong competitive constraint on the merged entity?

107. Whether remaining competitors in the relevant markets for the acquisition of raw milk will exert a competitive constraint post acquisition requires consideration of the relevant factual(s) and counterfactual(s), having regard to the specific features of those factual(s) and counterfactual(s).
108. For example, in a factual involving MG Full Ownership, a combined Applicant and WCB would reduce by one the number of competitors in the relevant markets for the acquisition of raw milk relative to any of the counterfactual(s).

109. In a factual involving MG Partial Ownership, WCB would be likely to continue to acquire raw milk in its own right. The Applicant may, however, have a reduced economic incentive in this factual to compete with WCB in relation to the acquisition of raw milk (having regard to its majority shareholding of WCB). In such a factual, the Applicant and WCB might also, as related bodies corporate, be legally able to reach agreement as to the price at which raw milk was acquired and the suppliers from whom it was acquired (subject to having regard to the interests of remaining minority shareholders of WCB).

110. In the Status Quo, Saputo Full Ownership or Saputo Partial Ownership, the number of competitors in relevant raw milk markets will not be reduced or diminished relative to any factual.

**Issue 14. Does Murray Goulburn’s cooperative status impact on the way it is likely to act in the future in the market(s) for the acquisition of raw milk, in particular in relation to prices paid for raw milk? If so, how and to what extent?**

111. WCB understands that the Applicant operates under a cooperative structure (which requires it take into account the interests of its farmer members) and that the Applicant has a stated objective of significantly increasing the underlying farm gate milk price to the Applicant's suppliers by at least $1.00 per kilogram of milk solids (more than 7 cents per litre) between 2012 and 2017.47

112. WCB submits that this statement of intent to be of limited relevance in assessing the likely public detriment or benefits of the Application for the following reasons. It is simply a statement of intent that may or may not come to fruition. Even if it did come to fruition it may or may not be related to the Applicant's cooperative structure.

113. In assessing the likely competitive effects of the proposed acquisition, WCB submits that the relevant issue to consider is not whether the Applicant will offer a similar or higher price in absolute terms in the future when acquiring raw milk by virtue of its cooperative status. Rather, it is whether the price paid to acquire raw milk in the factual(s) is likely to be higher or lower compared to the price likely to be paid for raw milk in the relevant counterfactual(s).

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47 See paragraph 32 of the Application.
Issue 15. Will the removal of WCB from the market(s) for the acquisition of raw milk increase the likelihood of coordinated effects in the market(s) for the acquisition of raw milk?

114. Whether there is an increase in the likelihood of coordinated effects requires consideration of the relevant factual(s) and counterfactual(s), having regard to the specific features of that factual and counterfactual. In this regard, please see WCB’s response to issue 13 above.

Issue 16. What are the nature and extent of barriers to entry and expansion in the market(s) for the acquisition of raw milk?

115. WCB submits that the description of barriers to entry and expansion relating to the acquisition of raw milk in the version of the Application available to WCB is broadly accurate.

Issue 17. Is the proposed acquisition likely to have the effect of lessening competition in the market(s) for the acquisition of raw milk?

116. In assessing whether the proposed acquisition is likely to have the effect of lessening competition in the relevant markets for the acquisition of raw milk, the Tribunal will need to consider and compare the likely competitive effects arising in the relevant factual(s) and counterfactual(s), having regard to the specific features of that factual and counterfactual and their impact on competition for the acquisition of raw milk.

Supply of bulk raw milk

Issue 18. What are the nature and extent of existing rivalry or competition between Murray Goulburn and WCB in the market(s) in which they supply bulk raw milk to food manufacturers?

117. WCB does not make any submissions on this issue at this time.

Issue 19. Will the remaining competitors in the market(s) for the supply of raw milk to food manufacturers place a strong competitive constraint on the merged entity?

118. WCB does not make any submissions on this issue at this time.

Issue 20. What is the extent of countervailing power on the part of food manufacturers that acquire bulk raw milk?

119. WCB does not make any submissions on this issue at this time.

Issue 21. To what extent can customers of bulk raw milk in central and south east South Australia, and south west Victoria economically acquire milk from outside these
regions? Is the proposed acquisition likely to have the effect of lessening competition in the market(s) in which the merger parties supply bulk raw milk?

120. WCB does not make any submissions on this issue at this time.

**Bulk cream**

**Issue 22.** What are the nature and extent of existing competition between Murray Goulburn and WCB in the market(s) for the supply of bulk cream, particularly in Victoria and South Australia?

121. WCB does not make any submissions on this issue at this time.

**Issue 23.** To what extent would the merged entity have the ability to raise the price of bulk cream to customers in Victoria and South Australia?

122. WCB does not make any submissions on this issue at this time.

**Issue 24.** Is the proposed acquisition likely to have the effect of lessening competition in the market(s) in which the merger parties supply bulk cream?

123. WCB does not make any submissions on this issue at this time.

**Other products**

**Issue 25.** For all other products, compared with the likely future without the proposed acquisition, is the proposed acquisition likely to lessen competition in the relevant markets? In particular:

(a) What are the nature and extent of existing rivalry or competition between Murray Goulburn and WCB in relation to the supply or acquisition of the relevant products?

(b) How significant are Murray Goulburn and WCB’s competitors likely to be in constraining the merged entity in relation to the supply or acquisition of the relevant products?

(c) What are the nature and extent of barriers to entry to, and expansion in, the supply or acquisition of the relevant products?

124. The Application states that there is no evidence that [WCB] could be described as a "vigorous and effective competitor" in the supply of downstream dairy products and that WCB’s Great Ocean Road branded cheese product (which is supplied to Coles) is not a high selling product. WCB does not consider these statements to be accurate. WCB submits that it has experienced recent success in relation to the supply of downstream
dairy products, including increases in sales of *Great Ocean Road* cheese and *Sungold* fresh white and flavoured milk.

125. WCB does not otherwise make any submissions on this issue at this time.

**General**

**Issue 26. Does Murray Goulburn’s corporate structure as a farmer-owned cooperative impact on whether the proposed acquisition would have the likely effect of lessening competition in the relevant markets?**

126. While it may be relevant to consider potential benefits of a farmer owned co-operative structure, it will also be relevant to among other things consider the extent to which those claimed benefits are consistent with:

(a) the Applicant's historical performance with respect to the prices being offered to its farmer members and the quantities of milk it has acquired;

(b) the Applicant's historical performance with regard to increasing the volume and value of its exports;

(c) how the level of debt / gearing that would be incurred by the Applicant in acquiring WCB (and the servicing of that debt) may impact on the Applicant's ability to meet its objective of increasing farm gate pricing; and

(d) how the cooperative structure compares with the motives driving a publicly listed company (such as WCB), including incentives to perform and deliver adequate returns to shareholders.

**Issue 27. What is the impact, if any, of Murray Goulburn’s proposed capital restructure on the competitive effects of the proposed acquisition?**

127. WCB currently has insufficient information about the detail of the proposed capital structure to make any submission on this issue at the present time.

**Other detriments**

**Issue 28. Are there any other public detriments that are likely to result from the proposed acquisition?**

128. WCB refers to paragraphs 66(b), 66(g), 67, 68 and 77 above. WCB does not otherwise make any submissions on this issue at this time.

**Issue 29. What is the magnitude of any such detriments?**

129. WCB does not make any submissions on this issue at this time.
Weighing the benefits and detriments

**Issue 30. After weighing the public benefits against the public detriments, is there a net public benefit such that the proposed acquisition should be allowed to occur? Over what period of time should public benefits and public detriments be measured?**

130. WCB does not make any submissions on this issue at this time.

**Period of authorisation**

**Issue 31. Should any authorisation granted for Murray Goulburn to acquire WCB be expressed to be in force for a specified time period?**

131. Yes.

**Issue 32. If so, what time period is appropriate?**

132. The appropriate period for which authorisation (if granted) should be in force is the period commencing on the date of any authorisation and ending at the conclusion of the offer period under the Applicant's current off-market takeover bid as set out in the MG Bidder's Statement and governed by the Corporations Act.

**Dated:** 18 December 2013