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Statement of Issues

Public Version

Taranaki By-Products/Lowe Corporation

19 May 2021

Introduction

1. On 9 February 2021, the Commerce Commission registered an application (the Application) by Taranaki By-Products Limited (TBP) seeking clearance for it, or an interconnected body corporate (the Applicant), to acquire up to 100% of the shares in Tuakau Proteins Limited (TPL), Hawkes Bay Protein Limited (HBP), and Jackson Transport Limited (JTL) (together, JV Companies) (the Proposed Acquisition).[1]

2. To clear an application, the Commission must be satisfied that an acquisition will not have, or will not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

3. This Statement of Issues (SoI) sets out our concerns about the potential competition issues we have identified following our initial investigation. This is so the Applicant, Lowe Corporation Limited/Graeme Lowe Protein Limited (Lowe) (together, the Parties), and interested parties can provide us with submissions relating to those concerns.

4. In reaching the preliminary views set out in this SoI, we have considered information provided to date by the parties and other industry participants. We have not yet made any final decisions on the issues outlined below (or any other issues) and our views may change, and new competition issues may arise, as the investigation continues.

Executive Summary

5. Our primary concern is that the Proposed Acquisition eliminates the only potential independent constraint for rendering poultry material in the upper North Island. Specifically, we are testing whether Lowe's current majority ownership of TPL would cause TPL to act with a degree of independence from the Applicant's other rendering businesses. With the Proposed Acquisition, and therefore absent this independence, TPL would not compete with these other operations. At this stage, we have no outstanding concerns with the acquisition of shares in HBP and JTL. We set out our current thinking below.

6. We are not currently satisfied that the Proposed Acquisition would not be likely to result in a substantial lessening of competition in some poultry material rendering

[1] A public version of the application is available on our website at: https://comcom.govt.nz/case-register/case-register-entries/taranaki-by-products-limited-lowe-corporation-limited.

and output markets due to unilateral effects. We are seeking further information from interested parties on these issues. On the evidence we have received so far:

6.1 TPL and the Applicant's rendering plant in Waitoa are historically each other's closest and only competitors for poultry rendering in the upper North Island. However, there is no current overlap as the plant owned by TPL (the Tuakau Plant) is inoperable after a recent fire and prior to the fire it had withdrawn from poultry rendering.

6.2 Absent the Proposed Acquisition we consider that:

6.2.1 TPL is likely to rebuild its rendering plant in Tuakau and the Parties will remain its shareholders.

6.2.2 Lowe's shareholding would impose a constraint on the Applicant as it would be incentivised to ensure TPL competes against the Applicant's other operations.

6.2.3 TPL is likely to have the ability to compete for poultry customers.

6.3 At this stage, it is unclear that there are other potential competitors in poultry rendering that are sufficiently likely to enter the market in a relevant timeframe. [ ] poultry processors are unlikely to have sufficient countervailing power to restrict an increase in price or decrease in quality, [ ].

7. If there is a substantial lessening of competition in the market for poultry rendering, there may be a flow on effect in a poultry output market. There is less likely to be concerns in the output market (compared to rendering markets) because geographic markets are likely to be wider and there are likely more competitors (since some poultry processors retain ownership of the outputs from the rendering process).

8. We have few concerns in markets for the rendering and outputs of material from other species. The JV Companies and the Applicant's other businesses are not close competitors or potential competitors due to distance and/or the material they compete for. For bovine rendering and outputs, where the Proposed Acquisition may lessen competition, there are third-party competitors and a greater ability for customers to self-supply.

9. We have few concerns in relation to:

9.1 coordinated effects, due the numbers of competitors and potential competitors (in the case of poultry markets, potentially none, making coordinated effects less relevant);

9.2 vertical effects, as we have not identified an input that the merged entity could use to foreclose competitors; and

9.3 conglomerate effects, as bundling does not appear to be a feature of the market.

The concerns we are testing

10. We are still to conclude on the relevant markets in this investigation. However, at this stage, the focus of our investigation is whether the Proposed Acquisition would substantially lessen competition due to:

10.1 unilateral effects for the supply of poultry rendering services in the upper North Island; and

10.2 unilateral effects for the supply of at least one poultry rendering output (poultry fat) in the upper North Island.

11. At this time, we are not investigating further, and do not require any further information from the Parties or interested parties in respect of:

11.1 the rendering of:[2]

11.1.1 poultry material in the lower North Island;

11.1.2 bovine and casualty material; and

11.1.3 shop collection;

11.2 the supply of rendering outputs produced from:

11.2.1 bovine material;

11.2.2 casualty material; and

11.2.3 shop collection;

11.3 coordinated effects;

11.4 vertical effects; and

11.5 conglomerate effects.

12. We explain the reasons below and invite submissions on our position.

Process and timeline

13. We have agreed with the Parties an extension of time for making our decision until 24 June 2021.

14. The Commission would like to receive submissions and supporting evidence from the Parties and other interested parties on the issues raised in this SoI. We request

2 Except to the extent that rendering of this material is relevant to the markets above at [10.1] and [10.2].

responses by close of business on 2 June 2021, including a public version of any submission.

15. All submissions received will be published on our website with appropriate redactions.[3] Parties will have the opportunity to cross-submit on the public versions of submissions from other parties by close of business on 9 June 2021.

16. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

Background to the industry

17. The primary focus of the Applicant's business and the JV Companies which are the subject of the Proposed Acquisition is the rendering of by-product material generated from activities such as meat processing, farming, and tanning.

The rendering process

18. Rendering refers to the further processing of animal by-product material such as bone, feathers, offcuts, and blood into outputs.[4] These outputs can be separated into two categories.[5]

    18.1 Dry products, such as meat, bone and feather meals which are used for animal feed, pet food, fertiliser.

    18.2 Wet products, such as oils and edible and inedible tallows which are used in animal feed, bio-diesel production, cosmetic and pharmaceutical manufacture, and food production.

19. The rendering process, the outputs produced, and the waste management systems employed, vary between plants and the species of the material being rendered.[6] However, the standard process of rendering occurs on "lines" which have equipment that:

    19.1 breaks the material into smaller pieces;

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3 Confidential information must be clearly marked (by highlighting the information and enclosing it in square brackets). Submitters must also provide a public version of their submission with confidential material redacted. At the same time, a schedule must be provided which sets out each of the pieces of information over which confidentiality is claimed and the reasons why the information is confidential (preferably with reference to the Official Information Act 1982).

4 For the purposes of this SoI, we refer to the various operations that generate renderable material as meat processors for the remainder of this document.

5 *Tuakau Proteins Limited and Graeme Lowe Protein Limited* [2014] NZCC 26 at [47] (*Tuakau/Lowe* [2014]).

6 For example, the effective processing of feathers tends to require a specialised early stage process called hydrolising to break down the feather structure and the output of feather rendering does not produce wet products, the Application at Table 8; Commerce Commission interview with [ ]

19.2 heats and separates what will become wet products from the material; and

19.3 dries and mills the remainder to produce dry products.

20. Rendering generates odour and effluent.[7] Renderers must treat this waste. Failure to do so can risk penalties for non-compliance of resource consents.[8]

Sources of material

21. Most of the volume of renderable material comes from meat processors.[9] Some meat processors do their own rendering onsite (which we refer to as an "in-house renderer"). Others send their material to a renderer (which we refer to as an "independent renderer"). The material is costly to transport (relative to its value) and degrades quickly. This limits how far material can be transported. A meat processor will normally try to send their material to a nearby rendering plant.

22. Meat processors typically provide this material to independent renderers under arrangements that have been categorised as:[10]

22.1 toll rendering arrangements, where the renderer supplies toll rendering services to meat processors (ie, a selling market). The meat processors retain ownership of the material and over a volume of the plant's outputs, which they may then either use themselves or market and sell to third parties.[11] Toll customers are generally responsible for transport costs to and from the renderer; or

22.2 direct collection arrangements, where the renderer buys the material from meat processors (ie, a buying market) and then markets and sells the outputs. Transport costs are generally deducted from the final price meat processors receive.

23. Other major sources of renderable material include:

23.1 the processing of hides and pelts (the flesh stripped from the hide is known as "fleshings");

23.2 local butcheries and in-house supermarket butcheries (known as "shop collection"); and

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7 Including dissolved solids, and liquid from evaporation that occurs during rendering.

8 These can vary due to the conditions of an operation's current consent but may include fines, more restrictive conditions for renewals, or a requirement to cease operations upon a breach being upheld. See, for example, Commerce Commission interview with [ ] We expand on consent requirements below.

9 That is, operations that slaughter bovine, ovine, chicken or some combination of species.

10 *Tuakau/Lowe* [2014] at [19].

11 We understand that renderers tend to mix material from multiple providers as it is more efficient than rendering material from one provider and cleaning the lines before rendering the next. As a result, those providers with toll arrangements own a proportion of the total outputs of a rendering operation in line with the volumes provided and yields determined under their arrangement with the renderer. See, for example, Commerce Commission interview with [ ]

23.3 the collection of animals that have died on farms (known as “casualty” or “dead” stock).

The regulatory environment

24. Rendering operations are subject to two key regulatory regimes that affect the species and volumes of renderable material that these operations compete for.

24.1 Overseas market access requirements (OMARs) are standards that renderers must meet to sell outputs to overseas markets. These standards can vary by country and can be restrictive.[12] For example, certain material may be prohibited from being processed on the same line or in the same plant as other material.[13] Renderers that are able to meet those standards can earn a price premium.[14]

24.2 Resource consents are granted by territorial authorities and regional councils. These consents set the conditions under which a plant may operate and can affect the maximum volumes of material a plant can receive, its operating hours, and the outcomes of non-compliance (eg, ceasing operations).[15] The Applicant submits that the need to comply with the resource consent can limit the material that a rendering operation competes for.[16]

Recent trends in the rendering industry in New Zealand

25. Some trends in the New Zealand rendering industry include the move to more specialised rendering and changes in the volumes of renderable material.

Renderers are becoming more specialised in the by-product material they accept

26. Rendering operations have become increasingly specialised in the types of material that they choose to process. Since our previous consideration of rendering markets in *Wallace/Farm Brands/Keep It Clean* [2016],[17] renderers tend to compete for material from a narrower range of sources and are less likely to mix or switch the material lines in their rendering operations process (eg, ovine and bovine together or

12 The standards are negotiated between the Ministry of Primary Industries (MPI), with input from the Meat Industry Association, and the representative body in the foreign market. A plant’s compliance may be maintained by ongoing testing, documentation, auditing by MPI, receiving market representatives and buyers. See, for example: Commerce Commission interview with [ ]; Commerce Commission interview with [ ]; the Application at [44] and [46].

13 For example, many plants no longer render pork material or material of unknown origin to comply with these requirements. The Application at [44].

14 The premium is only available for those markets or where the end product is destined for these markets. The Application at [52] and [71].

15 *Combined Waikato Regional Council & Matamata-Piako District Council Greenlea Premier Meats Ltd Decision* (9 October 2017), Schedule 1, at [4] (https://waikatomayoralforum.org.nz/assets/WRC/Community/Council-Meetings-and-Agendas/Resource-consent-hearings/Combined-Decisions-Report-Greenlea-Premier-Meats.pdf).

16 See, for example, the Application at [56].

17 *Wallace Group Limited Partnership, Wallace Corporation Limited, Farm Brands Limited and Keep It Clean Limited* [2016] NZCC 21 (*Wallace/Farm Brands/Keep It Clean* [2016]) at [74].

from ovine to bovine, etc).[18] This change appears to be the result of the increasingly strict OMARs, in addition to the efficiency benefits achieved by avoiding switching of lines between species.[19]

27. Bovine is increasingly rendered on dedicated lines where all material is ante and post-mortem (A&PM) inspected (ie, the animal is tested for disease both prior to and after slaughter). Casualty material is excluded from this processing since it is not practical to inspect stock that has died on a farm.[20]

Trends in by-product material volumes

28. Suppliers of renderable material continue to seek higher value alternatives to rendering where possible.[21] These alternatives include selling offal for human consumption,[22] to pet food manufacturers, or using renderable material in "value-add" operations such as the production of gel capsules.[23] This has resulted in a decline over time in the amount of each carcass that requires rendering. Some meat processors and renderers consider this trend may not continue, and that diverting material is increasingly difficult and costly.[24]

Market participants

The parties[25]

The Applicant

29. The Applicant (directly and via subsidiaries) owns shares in entities that provide animal rendering and associated services to by-product producers and farmers in the North Island. These entities include Glenninburg Holdings Limited (GHL) which is 70%

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18 Most renderers will not process pork at their plants (which is a common standard of OMARs for Muslim countries) and are ceasing shop collections due to the risk these volumes contain pork. The Application at Table 2 and Table 3; Commerce Commission interview with [ ].

19 Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

20 This contrasts with the previous practice of rendering bovine material on mixed lines due to a lack of premium for single species bovine outputs. *Tuakau/Lowe* [2014] at [48].

21 See, for example, Commerce Commission interview with [ ], Commerce Commission interview with [ ].

22 Commerce Commission interview with [ ].

23 The Application at [7] and [16]; Commerce Commission interview with [ ].

24 See, for example, Commerce Commission interview with [ ]. In terms of overall volumes of animals being processed, bovine meat processors are generally forecasting a downward trend in the amount of cattle they process having reached, and passed, peak levels: Commerce Commission interview with [ ]. Commerce Commission interview with [ ]. Poultry meat processors generally consider that the numbers of chickens they process annually is slowly increasing to meet increases in consumer demand: Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

25 The Application at [13]-[19].

owned by TBP. (The diagram in Attachment A shows the connection between the various entities.)

29.1 The Applicant has three joint venture companies with Lowe. We describe these joint ventures in the next section below.

29.2 The Applicant owns a rendering plant in Okaiawa, north of Hawera in Taranaki. This plant renders bovine and poultry, among other things.

29.3 The Applicant also owns shares in the following:

29.3.1 50% of the shares in Taranaki Bio Extracts Limited which operates a value-add plant attached to the Okaiawa rendering plant (ANZCO Foods Limited owns the other 50%); and

29.3.2 70% of the shares in GHL which owns Wallace Proteins Limited (Wallace Proteins), which owns and operates a rendering plant in Waitoa, Waikato (the Waitoa Plant). The remaining 30% is jointly held by Stephen Dahlenburg and two other individuals.[26] The Waitoa Plant mainly processes poultry and casualty material.

29.3.3 70% of the shares in Liqueo Bulk Storage Limited that operates bulk storage for tallow at the ports of Timaru and Napier. The remaining 30% of the shares are held by GHL.

29.3.4 100% of the shares in SBT Marketing Limited, which markets meal and tallow for customers.

30. Mr Dahlenburg also owns shares in the Kakariki Proteins Limited (KPL). KPL owns the Kakariki rendering plant near Marton in the lower North Island. The Kakariki plant processes poultry, fish and shop collection materials.

The joint ventures and targeted shareholdings

31. TPL, HBP and JTL are companies active in the animal rendering industry.

31.1 TPL owns and operates the Tuakau Plant in Tuakau, Waikato.

31.1.1 The Tuakau Plant previously processed both bovine and poultry. However, in December 2019 the Tuakau Plant had an issue with odour and effluent discharges [[27]] To help address this issue, TPL diverted its poultry volumes to the Waitoa Plant.[28]

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[26] The acquisition of the North Island rendering assets owned by these entities is subject to an ongoing investigation under section 47 of the Commerce Act 1986.

[27] [ ]

[28] The Application at [55].

31.1.2 On 23 March 2021, there was a fire at the Tuakau Plant (the Tuakau Fire).[29] The Plant has been closed since. [[30]]

31.2 HBP operates a rendering plant in Napier which only processes ovine material.[31]

31.3 JTL operates a transport service that collects material from customers to transport to TBP's Okaiawa plant and to HBP's Napier plant.[32]

32. These companies are currently owned via joint ventures between the Applicant and Lowe. Outside of these joint ventures, Lowe's main businesses in the wider meat industry are involved in the tanning and processing of hides, skins and pelts.[33]

33. The current ownership structure of each of the three JV Companies is set out in Table 1 below.

Table 1: Current ownership structure of the joint ventures

TPL	HBP	JTL
GHL 49.9%	Taranaki By-Products 50.1%	Taranaki By-Products 50%
Lowe 50.1%	Lowe 49.9%	Lowe 50%

Source: The Applicant

34. The Applicant seeks to acquire up to 100% of the shares in these entities from Lowe.

Other relevant market participants

Poultry processors

35. As we explain in further detail below, the focus of our investigation at this stage is in markets relating to poultry rendering. There are three major poultry processors involved in the relevant markets:

35.1 Tegel Foods Limited (Tegel) is the largest poultry processor in New Zealand. In the North Island it has primary processing plants in Auckland and New Plymouth. Tegel sells by-product material from these plants to [ ] respectively [[34]].[35] Tegel also maintains feed-milling

[29] TPL response to Commerce Commission requested for information dated 1 April 2021 (16 April 2021) at [1b].

[30] [ ]

[31] The Application at [5d].

[32] The Application at [93].

[33] The Application at [106].

[34] [ ]

[35] [ ].

operations at its processing plants [ ].[36] Tegel operates a rendering plant in the South Island.[37]

35.2 Inghams Enterprises (NZ) Pty Limited (Ingham's) is a North Island-based poultry processor. Its primary processing plant is in Waitoa. Ingham's has had its material rendered [ ]. Ingham's also operates separate feed-milling plants in the upper North Island which use some rendering outputs and has processing, rendering, and feed-milling operations in Australia.[38]

35.3 Van den Brink Poultry Limited (Brink's) has upper North Island poultry processing plants in Tuakau and Karaka. It sells by-product material from these plants to [ ]. Since November 2019 the volumes from its Auckland plant have been diverted to the [ ]. Brink's does not have its own feed milling business. However, it has an arrangement with [ ] for its feed and its arrangement with [ ] allows relevant outputs to be purchased [ ]

Vertically integrated meat renderers

36. Several meat processors have rendering operations integrated into their plants (that is, they are "in-house" renderers). These include (see the map in Attachment B):

36.1 AFFCO New Zealand Limited (AFFCO) has North Island rendering operations in Moerewa, Rangiuru, Horotiu, Imlay and Wairoa. These operations vary in the material they render from exclusively bovine or ovine to mixed material.[39] [ ].[40]

36.2 Auckland Meat Processors Limited, a primarily bovine meat processor, shares its Otahuhu site with the rendering operations of PVL Proteins Limited (PVL), both of which are part of the Wilson Hellaby group. Ruakura Meat Processors Limited, a Hamilton based pork meat processor, is also a part of the Wilson Hellaby group and supplies its renderable material to PVL.[41] [ ].[42]

36.3 Alliance Group Limited (Alliance) has a rendering operation in Levin. This operation renders the bovine and ovine material from both its Levin (both) and Dannevirke (ovine only) meat processing plants.[43] [

36 [ ]; Commerce Commission interview with [ ].

37 *Wallace/Farm Brands/Keep It Clean* [2016] at [33].

38 Commerce Commission interview with [ ].

39 Commerce Commission interview with [ ].

40 Commerce Commission interview with [ ].

41 Commerce Commission interview with [ ].

42 Commerce Commission interview with [ ].

43 Commerce Commission interview with [ ].

][44]

36.4 Taylor Preston Limited has a rendering operation in Wellington. It only renders the bovine material generated from its onsite meat processing. Its ovine material, which was previously rendered onsite to produce mixed outputs,[45] is now rendered at HBP.[46]

37. No poultry processors operate rendering plants in the North Island.

The relevant markets

38. We define markets in the way that we consider best isolates the key competition issues that arise from a merger. In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products and services that fall outside the market, but which would still impose some degree of competitive constraint on the merged entity.

The Applicant's view of the relevant markets

39. The Applicant submitted that the following markets are most relevant to our consideration of the Application:

39.1 The provision of rendering services for:[47]

39.1.1 A&PM inspected bovine material in the upper North Island;

39.1.2 casualty and mixed animal material in the upper North Island;

39.1.3 poultry material (including feathers) in the upper North Island;

39.1.4 A&PM inspected bovine material in the lower North Island;

39.1.5 mixed species material including shop waste, pork, fish and cervine in the lower North Island;

39.1.6 A&PM inspected ovine material in the lower North Island; and

39.1.7 poultry material (including feathers) in the lower North Island.

39.2 Separate national markets for the supply of:[48]

39.2.1 poultry meal;

44 Commerce Commission interview with [ ].

45 *Tuakau/Lowe* [2014] at [43]. It does not appear to do any rendering for third parties.

46 The Application at Table 6; Taylor Preston's "Plant Update" (26 September 2018).

47 The Application at [102].

48 The Application at Table 8 and [121]-[125]. The Applicant noted that outputs may be further differentiated by quality (eg, acidity for tallow): the Application at [103].

39.2.2 poultry fat (also known as poultry oil or tallow);

39.2.3 poultry feather meal;

39.2.4 bovine meat and bone meal (MBM);

39.2.5 bovine tallow; and

39.2.6 bovine blood meal.

Our current views of the relevant markets

40. We previously considered the relevant markets in the rendering industry in *Tuakau/Lowe* [2014]. We have not reached any final views on the relevant product markets. However, we are considering making some changes to our past approach to market definition. The changes proposed below are largely consistent with the market definitions proposed by the Applicant.

Separate product markets for bovine and mixed species/casualty

41. In *Tuakau/Lowe* [2014] rendering bovine fell into a market for “mixed species”.[49] However, OMARs for major customers now commonly allow outputs only from bovine that has been A&PM inspected (see above at [27]). The Applicant submits that the bovine market should be limited to A&PM inspected bovine.[50] We consider narrowing and separating these markets in this way may be appropriate.

41.1 Meat processors seeking their material to be rendered are less willing to have material rendered alongside non-A&PM material such as casualty and particularly shop collection (ie, mixed material lines are viewed to be a weaker substitute for single species or A&PM dedicated lines).[51] The rationale is primarily commercial due to the premium that can be achieved for outputs from A&PM material when separated from casualty stock or other species.[52]

41.2 Renderers are less willing to mix material, and therefore more likely to process A&PM inspected bovine separately. This is to mitigate the risk that access to stricter but higher priced markets is restricted and their profitability is reduced.[53]

42. Although we have assessed competition in a bovine market that only includes A&PM inspected bovine, we consider that some constraint could come from outside the market. For example, the Waitoa Plant does not currently produce a pure A&PM

49 See *Tuakau/Lowe* at [48] and [93].

50 See, for example, the Application at [43].

51 Commerce Commission interview with [ ]; Commerce Commission interview with [ ]. While shop collection material may be composed of material from A&PM inspected animals, because species separation cannot be guaranteed, it is rendered as mixed material.

52 The Application at [52].

53 See, for example, Commerce Commission interview with [ ]; the Application at [52].

inspected bovine meal (because it accepts casualty material), but it can still accept A&PM bovine material from meat processors.[54] The Waitoa Plant will be less attractive than renderers that can produce a pure A&PM-inspected bovine meal, as the latter will be able to pay a premium for the material.[55]

Geographic markets for rendering services in the upper North Island

43. In *Tuakau/Lowe* [2014] we identified that the extent of the geographic market was regional because it was costly to transport the material and the material degraded when there were delays between processing and rendering.[56] In *Tuakau/Lowe* [2014] the main overlap occurred in the lower North Island and we defined the geographic markets for rendering services accordingly.[57]

44. In this case (as we explain further below) the main overlap occurs in respect of the Tuakau Plant and the Waitoa Plant, which are in the Waikato region. As such we consider a geographic market for the upper North Island is appropriate, as submitted by the Applicant. This geographic market would include those rendering plants in the Waikato and Auckland areas but would not include those in Taranaki or Kakariki.

Combining toll and direct collection customers

45. In *Tuakau/Lowe* [2014] we analysed toll and direct collection relationships in separate markets.[58] Our current view in this case is that toll and direct collection customers should be combined into the same product market.[59] This appears consistent with the Applicant's proposed markets. We have found there are few differences between these customers in practice.

   45.1 While the toll and direct collection arrangements between renderers and meat processors differ in form, they are similar in substance.

      45.1.1 In practice there is no clear divide between direct and toll collection relationships. For example, a meat processor may have a direct collection relationship where it has first right to any outputs produced from its material at the toll processing cost.[60] Some relationships have become increasingly flexible, including the absence of written agreements, fixed terms, or requirements to remain as toll or direct collection.[61]

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54 See, for example, the Application at [49]-[50].

55 Without accounting for differences in transport costs. This is true for both customers to sell material to renderers (as the price received for material is determined in part by the price the outputs of rendering this material can achieve) or who have their material rendered on a toll basis and sell outputs themselves.

56 *Tuakau/Lowe* [2014] at [98]-[98.3].

57 At [97]-[98].

58 *Tuakau/Lowe* [2014] at [66] and [67]-[68.4.3].

59 We continue to describe the rendering markets as "the supply of rendering services" but this should be taken to include both direct collection and toll customers.

60 Commerce Commission interview with [ ].

61 The Application at [57].

45.1.2 The approach to pricing can be similar. A processing fee is factored into both toll and direct collection arrangements, whether as a component of the price charged for rendering services when meat processors purchase these on a tolling basis, or as a factor relevant to the price offered by renderers to meat processors to buy the material outright.

45.2 There is no difference in how the material is processed, the difference is whether ownership of the material is transferred.[62] The main difference appears to be an administrative one. Under toll processing the renderer must keep a closer track on how much output a toll customer is entitled to. Rendering plants provide both direct collection and toll processing services and meat processors occasionally switch between these.

Our approach towards buying markets and selling markets

46. The nature of the arrangement, and therefore whether a renderer is acting as a supplier of services (ie, seller) or purchaser of material (ie, buyer), has previously affected our approach to assessing potential competition concerns. In the past, we have considered that a substantial lessening of competition in a buying market requires a quantity reducing decrease in price.[63]

47. We are currently considering whether we should revisit this approach, and in particular, whether it is necessary for a price decrease to cause a quantity reduction for a substantial lessening of competition to arise in these markets.[64]

Narrowing output markets – geographic and customer dimension

48. In *Tuakau/Lowe* [2014] we considered that markets for outputs were national, as is submitted by the Applicant,[65] while noting that producers closer to domestic customers have a "transport cost advantage".[66] However, we are currently

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[62] This could have the effect of transferring a degree of risk relating to changes in output prices between renderers and meat processors depending on the extent to which prices are fixed within the various contracts.

[63] *Tuakau/Lowe* [2014] at [137]; Commerce Commission "Mergers and Acquisitions Guidelines" (July 2019) at [4.2].

[64] One reason for this is that, given the similarities between processing on a toll basis and through direct collection (and that customers switch between these types of agreements), there does not appear to a significant difference in analysis between the buyer and seller markets. As such, it is unclear why we could have concerns over harm under one type of arrangement and not the other. In *Tuakau/Lowe* we also were of the view that a change in the price of renderable material would be unlikely to reduce the amount of by-product material: at [137]. However, the evidence we have received in this case suggests that may not be the case. Although renderable material is a by-product, some meat processors we have spoken to told us that the return they earn from the material does affect the profitability of processing an animal and therefore may factor into their pricing decisions. See, for example, Commerce Commission interview with [ ]. For example, a fall in the price they receive for renderable material might affect the price they pay farmers for stock and the price they charge for the processed meat. This could reduce the overall quantity of bovine processed and therefore of renderable material supplied.

[65] The Application at [103].

[66] *Wallace/Farm Brands/Keep It Clean* [2016] at [74].

considering whether the geographic scope for poultry fat (or any other outputs) may be narrower than national. We are considering whether:

48.1 in relation to poultry fat, a narrower geographic dimension consisting only of the North Island may be more appropriate, as there may be significant additional transport costs incurred when using sources from outside of this area; and

48.2 there is a narrower group of customers for this output, being those involved in domestic animal feed production, as opposed to the trading companies that typically purchase rendering outputs primarily for export.[67]

Our current view on the relevant markets

49. We currently consider that the relevant markets in which to assess the Proposed Acquisition are the markets that the Applicant has identified (above at [39]) with the exception that we consider that one or more output markets may be narrower than national for domestic customers.[68]

50. In some instances below we refer to “rendering output markets” to cover the various output products of a species rather than listing each product. For example, we refer to “poultry rendering output markets” to refer to poultry meal, fat and feathers.

51. We invite submissions on our approach to market definition. In particular:

51.1 regarding toll and direct collection customers, whether it is:

51.1.1 appropriate to define markets on the basis of the type of arrangement between meat processor and renderer; and

51.1.2 necessary to require that a price decrease reduces quantity to find a substantial lessening of competition in buying markets;

67 To define a market that only includes some customers, it is necessary to show that suppliers can “price discriminate” between different groups (that is, price differently to these customers). See Commerce Commission “Mergers and Acquisitions Guidelines” (July 2019) at [3.40]-[3.41] In this case, there may be both traders and domestic users that purchase an output. These customers may have different options. A trader who mostly supplies to overseas customers may be willing to meet that demand from any supplier in New Zealand. In comparison a domestic user may prefer a nearby output supplier to reduce transport costs. Despite this, an output supplier may be unable to price differently. For example, if the output supplier tried to charge a higher price to local users, it is possible that those domestic users could purchase from traders (who are receiving a lower price). This is known as arbitrage. An output supplier would need to be able to prevent arbitrage to price discriminate.

68 We include within the bovine and poultry rendering markets, respectively, the blood of those animals. There are some slight differences in the process to render blood compared to other materials such as offal and bone. However, renderers need to be able to accept both materials (such as bone and offal) and blood to compete to provide services to meat processors. Including blood within the main rendering markets does not change the analysis. Similarly, feather is included in the poultry rendering market.

51.2 regarding outputs, whether there are any outputs for which:

51.2.1 supply sourced from the South Island is not a close substitute for customers in the North Island; and

51.2.2 the customers consist of domestic users, such as those using these outputs for feed production, as opposed to those who aggregate these outputs to market and sell them internationally including whether local users can be easily identified and whether they receive (or could receive) different prices to traders.

How the merger could affect competition

52. In this section we explain how the merger could affect competition.

52.1 First, we set out the theories of harm that we consider could arise from the Proposed Acquisition.

52.2 Second, we identify the markets referred to in paragraph 49 in which these concerns could arise. In sections to follow we set out our competition assessment for each of these markets.

The theories of harm we are considering

53. The Proposed Acquisition would result in the Applicant acquiring the remaining shares of the three JV Companies that it does not already own. These acquisitions alone would not reduce the number of suppliers in the market. However, the Proposed Acquisition could adversely affect competition if the JV Companies would compete independently from the Applicant’s other businesses in the counterfactual.

54. To test whether this is the case we are considering for each joint venture the following conditions.

54.1 Whether the joint venture would impose a constraint on any of the Applicant’s other businesses. This requires assessing whether in the counterfactual:

54.1.1 the relevant joint venture would be sufficiently independent from the Applicant’s other businesses such that it would impose some competitive constraint (assuming it operated in the same market as one of the Applicant’s other businesses); and

54.1.2 in the case of TPL, the Tuakau Plant is likely to be rebuilt and, if so, the configuration of the plant.

54.2 Whether the joint venture would compete in a market in which one of the Applicant’s other businesses competes. If so, the Proposed Acquisition may eliminate that competition.

54.3 To the extent there would be a loss of competition between one of the JV Companies and one of the Applicant's other businesses, whether there are sufficient other constraints such that a substantially lessening of competition is unlikely. That is, we are testing the extent of current competition, barriers to entry and expansion, and countervailing power.

The markets in which the theories of harm may arise

55. The Applicant submitted that that the only potential overlap relating to the Proposed Acquisition, prior to the Tuakau Fire, was between the Tuakau Plant (owned by TPL) and the Waitoa Plant (owned by the Applicant). [69] The evidence that we have gathered to date is consistent with this.

55.1 HBP is located in Napier and specialises in high-value EU export ovine rendering. The Applicant's other plants are located a substantial distance from HBP (ie, in the Waikato and Taranaki) and do not render ovine. As such no overlap occurs.[70]

55.2 JTL is a transport operator. The Applicant does not currently have other interests in transport operations and so no overlap occurs.[71]

56. We therefore do not consider the acquisition of the HBP and JTL shares would be likely to result in a substantial lessening of competition in any market and do not consider the acquisition of these shares any further in this SoI.

57. We do, however, consider that there is a potential overlap between the Tuakau Plant and the Waitoa Plant. The Tuakau Plant and the Waitoa Plant are both located in the upper North Island and have both processed poultry and bovine material. We therefore consider it is appropriate to assess whether the Proposed Acquisition would be likely to substantially lessen competition in the relevant bovine and poultry rendering markets. We also consider the effect of the Proposed Acquisition in the related downstream output markets.

58. The Waitoa Plant also processes casualty material. However, the Tuakau Plant was not a competitor to render casualty material, nor do we consider it is likely to do so in the future.[72] As such we do not consider that there is a competitive overlap and do not consider the casualty market any further in this SoI.

59. Finally, our investigations indicate that the Tuakau Plant is not in the same geographic market as the Applicant's Taranaki plant (see Taranaki By-Products on the map in Attachment B) for most customers and therefore limited competitive

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69 The Application at [112].

70 The Application at [74].

71 The Application at [93].

72 This is because the Tuakau Plant has focused on processing A&PM inspected bovine. Further, the Tuakau Plant was required under its resource consent to only process material from "animals that have been slaughtered for processing at processing premises": the Application at Table 2; [ ].

overlap arises in any lower North Island market.[73] As such, we do not consider the Proposed Acquisition is likely to substantially lessen competition in these markets and they are not considered further in this SoI.

Summary of the markets we consider in this SoI

60. To conclude we are considering whether the Proposed Acquisition could substantially lessen competition in one or more of the following markets:

    60.1 the supply of poultry rendering services in the upper North Island;

    60.2 the supply of poultry rendering outputs which may have different geographic scopes ranging from the North Island to New Zealand;

    60.3 the supply of bovine rendering services in the upper North Island;

    60.4 the supply of bovine rendering outputs in New Zealand.

The factual and counterfactual

61. Assessing whether a substantial lessening of competition is likely requires us to compare the likely state of competition if the Proposed Acquisition proceeds (the scenario with the acquisition, often referred to as the factual) with the likely state of competition if it does not (the scenario without the acquisition, often referred to as the counterfactual) and to determine whether competition is likely to be substantially lessened by comparing those scenarios.

62. In the Application, the Applicant submitted that if the Proposed Acquisition did not proceed, then the current ownership structure of the joint venture companies would continue (ie, the status quo).[74]

63. Following the Tuakau Fire we have sought the Applicant's views on whether and when the Tuakau Plant will be rebuilt. The Applicant has [[75]

    63.1

    63.2]

[73] There are some customers in the King Country (in the upper North Island) that render at the Applicant's Okaiawa rendering plant: The Application at [5c]. However we are satisfied these customers have sufficient alternative options such as an in-house renderer or self-rendering. See for example, Commerce Commission interview with [ ].

[74] The Application at [25].

[75] [ ]

64. At this point, we consider that there is a real chance counterfactual in which the Tuakau Plant is rebuilt within a competitively relevant timeframe, Lowe retains its current interest in the TPL joint venture, and TPL acts sufficiently independently to impose a competitive constraint on the Waitoa Plant. We reach this view because:

64.1 we have not received evidence to suggest that [ ];

64.2 we consider that there are incentives to rebuild the Tuakau Plant within a competitively relevant timeframe; and

64.3 TPL is structured such that TPL (and the Tuakau Plant) is to be operated independently from the Applicant's other businesses [ ].[76]

65. We expand on each of the above points below.

The Parties are likely to remain shareholders in TPL

66. The Applicant has submitted that the current ownership of the three JV Companies will likely continue in the counterfactual and [ ].[77] This is consistent with the evidence we have received.

There is a real chance the Tuakau Plant will be rebuilt in the counterfactual

67. The Applicant has submitted that there are [ ]:[78]

67.1 [ ]

67.2 [ ]

67.3 [ ]

68. We currently consider there is a real chance that the Tuakau Plant will be rebuilt in the counterfactual because, in summary:

68.1 it appears likely that additional rendering capacity will be required to replace the lost capacity from the Tuakau Plant;

76 *Tuakau/Lowe* [2014] clearance application at [4.5]; [ ]

77 The Application at [25].

78 The Applicant's response to Commerce Commission request for information dated 1 April 2021 (20 April 2021) at [2].

68.2 although a new plant may take time to rebuild, [ ] incentive to rebuild;[79] and

68.3 rebuilding the Tuakau Plant appears to be [ ].[80]

Additional rendering capacity is likely to be required in the upper North Island

69. By-product material that would otherwise have been rendered at the Tuakau Plant is currently being diverted to other plants.[81] However, the volumes provided by large customers and constraints on the ability for material to be diverted to other plants are such that additional capacity in upper North Island markets appears likely to be required.

69.1 AFFCO has a plant at Horotiu (approximately one hour away from the Tuakau Plant) [ ].[82]

69.2 PVL has a plant in Auckland [ ].[83]

69.3 The Waitoa Plant at this stage is unable to offer dedicated A&PM processing due to its configuration and casualty business.[84] This means it cannot achieve the same price premium for A&PM bovine material and cannot offer the same prices for material as plants that can.[85] One meat processor had previously noted that it would be unwilling to send material to the Waitoa Plant if it were to be mixed with casualty material.[86]

69.4 As we identified in the market definition section, the Applicant's plant at Okaiawa (approximately five hours away from the Tuakau Plant) is likely too far away to be a good option for most major customers in the upper North Island.

TPL is likely to be incentivised to rebuild despite potential risks

70. The Applicant has submitted that the timeframe and cost of rebuilding the Tuakau Plant are [ ]. However, it is likely to be some time [ ] before it could

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79 TPL response to Commerce Commission request for information dated 1 April 2021 (16 April 2021) at [5d] and [5e].

80 TPL response to Commerce Commission request for information dated 1 April 2021 (16 April 2021) at [3a] and [3b].

81 TPL response to Commerce Commission request for information dated 1 April 2021 (16 April 2021) at [2a].

82 The Tuakau Plant was processing around [ ] tonnes per day before it closed due to the Tuakau Fire. AFFCO's Horotiu plant has spare capacity of around [ ] tonnes per day: Commerce Commission interview with [ ].

83 Commerce Commission interview with [ ].

84 The Application at [52].

85 The Application at [52].

86 Commerce Commission interview with [ ]

return to operation.[87] [ ].[88]

71. [ ] with rebuilding the Tuakau Plant. As the Tuakau Plant has only recently been [[89]

71.1

71.2

71.3]

72. TPL will need to obtain the necessary resource consents for any future operations at the Tuakau Plant. Prior to the Tuakau Fire, TPL was in the process of renewing its consent.[90] [[91] [92]]

73. TPL has submitted that the Tuakau Plant's [ ].[93] We consider that this likely incentivises TPL to rebuild the Tuakau Plant.

74. Although it may take [ ] to rebuild the Tuakau Plant, we consider that the competitive constraint would likely occur once the rebuild starts. Other renderers will be aware that customers might switch back to the Tuakau Plant once reopened and this may influence their current behaviour.

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87 The Applicant's updated response to Commerce Commission request for information of 10 March 2021 and 1 April 2021 (4 May 2021) at [6]; Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

88 [ ]

89 [ ]

90 See, for example, https://www.waikatoregion.govt.nz/community/whats-happening/have-your-say/rc-applications/tuakau-proteins/; the Application at [56].

91 [ ]

92 [ ]

93 TPL response to Commerce Commission request for information dated 1 April 2021 (16 April 2021) at [5d] and [5e].

[

75. [94]

76. [95]].[96]

In the counterfactual TPL will likely act independently from the Applicant's other businesses

77. The Applicant submitted that the Proposed Acquisition cannot give rise to any competition concerns as Lowe's shareholding in TPL does not currently provide any independent competitive constraint on TPL's business and operations.[97] The Applicant has submitted:

    77.1 as common owners of TPL, the commercial interests of the GHL directors and the Lowe directors are aligned;[98] and

    77.2 the Proposed Acquisition can be treated as an internal transfer because the Applicant and TPL are already associated.[99]

The Commission's current view

78. Given the ownership links between them, TPL is unlikely to operate as it would if it were fully independent from the Applicant's other businesses. Despite this, our current view is that – assuming the Tuakau Plant is rebuilt – there is a real chance that TPL would impose a significant competitive constraint on the Applicant's other rendering plants (particularly the Waitoa Plant) in the counterfactual.

79. First, the TPL joint venture was formed on the basis that it would operate independently from the Applicant's other interests (specifically, TBP and HBP).[100] The TPL joint venture was the subject of a clearance application in 2014. The Applicants in that case stated their expectation was that TBP would operate separately to TPL.[101] [ ]

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[94] [ ]

[95] [ ]

[96] [ ].

[97] The Application at [4] and [105].

[98] The Application at [107].

[99] The Application at [108]-[110].

[100] [ ]; *Tuakau/Lowe* [2014] clearance application at [4.5]; [ ].

[101] The Applicant in this case was also an applicant in *Tuakau/Lowe* [2014]. See *Tuakau/Lowe* [2014] clearance application [4.5] ("The Applicants are of the view that TBP and HBP will continue to operate as a separate group of companies post-transaction.")

79.1 [

].[102]

79.2 [ ].
[103]

80. However, Lowe has indicated
[ ].[104]

81. As the Applicant notes, we assessed the proposed acquisition in *Tuakau/Lowe* [2014] on the basis that it was a full merger, rather than resulting in independent and partial ownership in a joint venture. We considered that was the most conservative basis on which to assess the competitive impact of that acquisition because if it was unlikely to substantially lessen competition under a full merger, then it was unlikely to do so under lesser ownership links.[105]

82. In this case, we consider it is likely that in the counterfactual, Lowe would retain its current shareholding in TPL and TPL would impose some competitive constraint on the Applicant's other businesses.[106] We consider this is the most competitive likely counterfactual. If the Proposed Acquisition is unlikely to substantially lessen competition on this basis, then it is unlikely to do so in circumstances where that independence does not exist.

83. Second, where the Tuakau Plant and the Waitoa Plant compete or have the potential to compete, Lowe's interests may diverge from the Applicant's. For example, although the Applicant may not have a preference over which of its plants meat processors use, Lowe will. We recognise that the constraint imposed by TPL may not be the same as a fully independent renderer. However, in this case where there are no other renderers that are independent from the Applicant (as we consider is the case for poultry as set out in paragraphs [93]-[93.2] and [100]), the loss of that constraint could be substantial.

Our current view on the counterfactual

84. We currently consider that there is a likely counterfactual in which the Tuakau Plant is rebuilt, Lowe retains its current interest in TPL, and TPL acts sufficiently independently to impose a competitive constraint on the Applicant's Waitoa Plant.

85. We invite submissions on our view of the counterfactual. In particular:

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102 [ ].

103 [ ].

104 Commerce Commission interview with [ ].

105 *Tuakau/Lowe* [2014] at [4].

106 Market conditions have changed since *Tuakau/Lowe* [2014]. For example, the Waitoa Plant is no longer independent from the Applicant.

85.1 whether there are any alternative purchasers for some or all of the shares in TPL, HBP and JTL;

85.2 whether additional capacity is likely to be needed in the upper North Island or whether there is sufficient capacity in existing plants;

85.3 the likelihood that the Tuakau Plant is rebuilt either by TPL or an alternative purchaser; and,

85.4 whether TPL would act to some degree independently of the Applicant in the counterfactual.

Horizontal unilateral effects of the Proposed Acquisition for poultry markets

86. Unilateral effects arise when a firm merges with or acquires a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that a market participant can profitably increase prices above the level that would prevail without the merger (and/or reduce quality).

87. In this section we consider horizontal unilateral effects of the Proposed Acquisition for poultry markets:

87.1 the upper North Island market for the supply of poultry rendering services; and,

87.2 the North Island market for poultry outputs.

The upper North Island market for supply of poultry rendering services

The Applicant's submissions

88. The Applicant has submitted that the Tuakau Plant is not likely to be a competitor for poultry rendering services. This is because, prior to the Tuakau Fire, the Tuakau Plant had permanently withdrawn from processing poultry.[107]

89. According to the Applicant, the Tuakau Plant would not compete for or render any poultry material [ ]instead the Tuakau Plant would continue as a dedicated bovine rendering plant.[108] This is primarily due to ongoing resource consent risks presented by overloading the effluent management system at the Tuakau Plant.[109] Odour issues previously gave rise to breaches of the Plant's resource consent and resulted in a $180,000 fine.[110] The Applicant submitted that this system could not cope with the higher volume of liquid resulting from processing

107 The Application from [54]-[57].

108 See, for example, the Application at [56], the Applicant's response to Commerce Commission request for information dated 10 March 2021 (1 April 2021) at [1.6].

109 The Application at [54]-[56]; the Applicant's response to Commerce Commission request for information dated 10 March 2021 (1 April 2021) at [1.1] and [1.6]-[1.8].

110 The Application, at [54].

poultry material.[111] The system remains under strain and it is unlikely to be able to increase capacity [ ].[112]

90. The Applicant also submitted that [[113]] The Applicant submitted that [[114]]However, it appears that this submission [ ]

91. The Applicant also submitted that poultry processors would be able to build their own rendering services.[115]

The Commission's current view

92. We currently consider it is likely that, if the Tuakau Plant is rebuilt, it will impose a competitive constraint on the Applicant's other poultry rendering businesses. We consider the loss of this constraint (ie, the loss of a potential competitor) is unlikely to be offset by new entry or expansion, or any countervailing power possessed by poultry processors.

<u>Closeness of potential competition – the plants were historically each other's closest competitors</u>

93. The Tuakau Plant (operated by TPL) and the Waitoa Plant (now operated by Wallace Proteins) have historically been each other's closest competitors for poultry rendering.

    93.1 This is the view of [ ] market participants that we have interviewed and supported by the fact that major poultry suppliers in the upper North Island have:

        93.1.1 gone to tender and [ ] received commercially viable proposals for rendering at the Tuakau Plant and Waitoa Plant;[116] and

        93.1.2 switched between the Waitoa Plant and the Tuakau Plant but nowhere else.[117]

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111 The Application at [54].

112 The Application at [56]; The Applicant's updated response to Commerce Commission request for information of 10 March 2021 and 1 April 2021 (4 May 2021) at [10]-[12].

113 [ ]

114 [ ]

115 The Application at [7].

116 See, for example, Commerce Commission interview with [ ].

117 With the exception of [ ] which had sent material from [ ] to the Applicant's plant in [ ]. However, this arrangement ended prior to 2014 due to transport costs and the effect of transport on output quality: Commerce Commission interview with [ ].

93.2 TPL only started diverting poultry material to the Waitoa Plant in December 2019.[118] The Applicant notes that following TPL's withdrawal from rendering poultry, [ ] poultry material "will need to be rendered at Waitoa" unless it decides to render this material itself.[119] Despite the diversion of poultry material to the Waitoa Plant, [ ].[120]

<u>In the counterfactual it is likely that the Tuakau Plant would compete for poultry rendering customers</u>

94. As identified above, we consider that in the counterfactual in which the Tuakau Plant is rebuilt, it is likely that it could compete against the Applicant's Waitoa Plant for poultry rendering customers.

95. First, we consider the Tuakau Plant is likely to have the technical capability to process poultry once rebuilt.

95.1 [ ][121] Prior to the Tuakau Fire, the Tuakau Plant was technically capable of processing poultry. If the Tuakau Plant is rebuilt to the same configuration would also have that capability.

95.2 Even if the Tuakau Plant is rebuilt for the purpose of rendering bovine material only, it would likely still be capable of processing poultry. Prior to December 2019, the Tuakau Plant was rendering both poultry and bovine material [ ].[122] We understand that to render feathers a rendering plant requires a "hydrolyser".[123] It is unclear whether the Tuakau Plant had a "hydrolyser" after it ceased rendering poultry. However, even without this, the Tuakau Plant would be a potential competitor for poultry. For example, it may be able to compete for poultry customers and add a hydrolyser if it is successful in winning a customer.[124]

96. Second, we have not seen evidence to suggest that future resource consents would prevent the Tuakau Plant from processing poultry.

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118 The Application at [54].

119 The Application at [57].

120 Commerce Commission interview with [ ].

121 [ ].

122 The Application at [55].

123 See, for example, Commerce Commission interview with [ ].

124 In principle it could also just divert feathers to other rendering plant. However, the Applicant is only other renderer in the North Island that processes feathers. TPL may not wish to rely on a competitor to subcontract feathers to. [ ].

96.1 [[125]][126]

96.2 The Applicant has claimed that poultry was the cause of the odour and effluent problems in December 2019 that resulted in complaints and proceedings in the Environment Court for breach of resource consent.[127] However, [ ].[128][ ][129]

97. Third, we currently consider there is a real chance that the Tuakau Plant would have the capacity to process poultry once rebuilt. If the Tuakau Plant is rebuilt with the same configuration and capacity that it had before the Tuakau Fire, we consider it is unlikely it would process poultry together with its pre-existing bovine volumes [ ][130] The main reason is that it may risk the Tuakau Plant breaching any future resource consent. However, there appears to be a [ ] chance that some of the bovine volumes that have been diverted away from the Tuakau Plant because of the Tuakau Fire would not return.

97.1 Greenlea Premier Meats Limited (Greenlea) has sought and gained resource consent for its own plant [ ].[131] [ ].[132]

97.2 [[133]]

98. Fourth, if TPL were to act independently from the Applicant's other businesses, as we consider would likely be the case should Lowe retain its shareholding, then we

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125 [ ]

126 Commerce Commission interview with [ ].

127 The Application at [54].

128 [ ].

129 [ ].]

130 The Application at [56]; [ ].

131 Commerce Commission interview with [ ]; *Combined Waikato Regional Council & Matamata-Piako Distrct Council Greenlea Premier Meats Ltd Decision* (9 October 2017).

132 [ ].

133 [ ]

consider it is likely that the Tuakau Plant would compete for poultry volumes against the Waitoa Plant if it were to lose bovine volumes. [ ].[134] A rebuilt plant on the Tuakau Plant's site might be attractive for poultry processors located in and around Auckland due to the transport cost and related potential efficiency advantages over the Waitoa Plant.[135]

Entry and expansion conditions and countervailing power

99. There are no other poultry rendering operations in the upper North Island. At this point it is unclear there is anyone likely to build a poultry rendering plant with a competitively relevant period.

100. The barriers for new entry into third party rendering are likely to be high. These include finding a suitable location, obtaining a resource consent, and obtaining sufficient scale to operate efficiently. [ ].[136]

101. [ ] customers do not appear to have sufficient countervailing power to constrain any potential increases in price. [[137] [138]]

102. As such we are not satisfied any threat of entry or expansion, or countervailing power [ ], is likely to impose a significant constraint on the merged entity for most customers.

Our current views on the poultry rendering market

103. At this point we are not satisfied the Proposed Acquisition would not result in a substantial lessening of competition in the upper North Island market for the supply

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134 Commerce Commission interview with [ ].

135 From processing a less-degraded product. [ ]

136 [ ].

137 [ ]

138 [ ]

of poultry rendering. We consider that even if the constraint imposed by the Tuakau Plant is small, the absence of any other competitor or potential competitor means that the loss of this potential competition (ie, lessening of competition) may be substantial.

104. We invite submissions on our current view. In particular:

104.1 the likelihood of a poultry processor building a rendering plant; and

104.2 the likelihood a rebuilt Tuakau Plant would be capable of processing poultry including:

104.2.1 the likely future configuration and capacity of the Tuakau Plant and how this would compare to operations before the Tuakau Fire;

104.2.2 any differences in the equipment required to process poultry compared with bovine material; and

104.2.3 whether the Tuakau Plant would impose a competitive constraint on the Waitoa Plant for poultry rendering even if the Tuakau Plant was rebuilt only for bovine.

Markets for poultry outputs

105. In the counterfactual, TPL may be a competitor for poultry rendering for the reasons set out above at [92]-[103]. If the Proposed Acquisition results in the elimination of TPL as a potential competitor in the market for poultry rendering in the upper North Island, then it follows that there could also be a corresponding impact in one or more poultry output markets.

106. The Applicant submitted that although there will be aggregation in the output market for poultry meal, concerns are limited, as:[139]

106.1 poultry output suppliers in the North and South Islands compete; and

106.2 all poultry meal is exported.

107. We understand that there are some domestic users of poultry outputs. For example, some poultry processors who use poultry fat in the production of chicken feed. We are testing whether there are other close substitutes for poultry fat for this use, such as canola oil. We are testing whether these are alternatives are priced reasonably compared to poultry fat and it they provide the appropriate nutritional balance.

139 The Application at [103].

108. We are testing whether the supply of poultry fat from outside of the North Island is a sufficient constraint despite transport costs and if poultry fat produced in the South Island is available to be supplied to the North Island.

109. With the Proposed Acquisition, the Applicant would be one of three suppliers of poultry fat in the North Island. The other suppliers are poultry processors who have arrangements with renderers that give these poultry processors control over the output of poultry fat in proportion with their renderable material inputs. If the Proposed Acquisition could enable the Applicant to amend current arrangements, it could potentially become the sole supplier of poultry oil in the North Island and raise the price.

110. We invite submissions on the extent:

110.1 to which there are domestic users of poultry outputs; and

110.2 of competition to service those domestic users, including:

110.2.1 the constraint from other suppliers of the poultry outputs; and,

110.2.2 alternative products that domestic users can use in place of the poultry rendering output.

Coordinated effects of the Proposed Acquisition for poultry markets

111. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all, or some, of its remaining rivals to coordinate their behaviour and collectively exercise market power such that output reduces and/or prices increase. Unlike unilateral effects, which can arise from the merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.[140]

112. The Applicant has submitted that the Proposed Acquisition would not result in coordinated effects because it would not result in any significant aggregation or integration in the any relevant market.[141] As noted above, at this point we consider that the Proposed Acquisition could result in some aggregation both in poultry and bovine markets.

113. In poultry markets, we consider that the Proposed Acquisition would be unlikely to result in a substantial lessening of competition because of coordinated effects in either rendering or outputs markets.

113.1 In rendering markets, we consider the Proposed Acquisition would eliminate the only competitor in the upper North Island poultry rendering market. As such there would be no remaining competitors to coordinate between. For this reason, our focus for poultry rendering is on unilateral effects.

[140] Commerce Commission “Mergers and Acquisitions Guidelines” (July 2019) at [3.84].

[141] The Application at [111].

113.2 In output markets, the Proposed Acquisition would eliminate TPL as an actual or potential competitor in poultry output markets. However, poultry processors who have arrangements which enable them to retain rights over poultry outputs (eg, existing toll rendering customers) would remain as rival suppliers, at least initially. Although the Proposed Acquisition may make coordination between these suppliers more likely by increasing future concentration (ie, eliminating a potential competitor), we consider that any substantial lessening of competition is more likely to arise from the Applicant using its position to amend these existing arrangements so as to remove these poultry processors from poultry output markets. For this reason, our focus for poultry outputs is on unilateral effects.

Horizontal unilateral effects of the Proposed Acquisition on bovine markets

The upper North Island market for bovine rendering

114. The Applicant has submitted that the Proposed Acquisition will not result in a substantial lessening of competition in respect of A&PM rendering markets.[142] The Applicant has submitted that there is a market for A&PM inspected bovine and that WPL will not no longer compete in that market.[143] The Applicant argues that this is because
[
].[144]

115. Despite the Applicant's submissions, we consider that the Waitoa Plant may impose a degree of constraint on the Tuakau Plant. This is because:

115.1 Even if the Waitoa Plant does not produce a pure A&PM meal, it can process bovine materials. As such it is an option for meat processors to send their material to, albeit likely resulting in less income than the meat processor would earn from rendering at an A&PM-inspected bovine renderer.

115.2 The Waitoa Plant could choose to switch to A&PM bovine and no longer process casualty material.[145]
[
[146]] the Waitoa Plant might choose to specialise in A&PM bovine or establish a separate plant to process casualty material.

116. To the extent the Proposed Acquisition would eliminate some competition between the Tuakau Plant and the Waitoa Plant we consider there are sufficient constraints

[142] The Application at [112]-[114] and [119].
[143] The Application at [112].
[144] [ ].
[145] In theory the Waitoa Plant could also do casualty and A&PM bovine on the same line but in separated batches or create a new line for casualty. However, this will create a risk that it will not meet [ ] standards which may require a complete separation of plants that process casualty and A&PM-inspected bovine.
[146] [ ]

such that there would not likely be a substantial lessening of competition in the upper North Island market for bovine rendering due to unilateral effects.[147]

116.1 AFFCO (a self-rendering meat processor) has previously competed against TPL and the Applicant,[148] [ ][149] and [ ].[150] We consider it is likely to have [ ] capacity to take on some volumes from the Tuakau Plant. [ ].[151] AFFCO has been identified as a competitor for volumes by some meat processors [ ].[152]

116.2 Some of the Tuakau Plant's largest customers are likely to have countervailing power due to a credible threat to self-render. For example:

116.2.1 Greenlea has already obtained a resource consent to render at its Morrinsville plant, [ ];[153] and

116.2.2 SFF is a major meat processor and generates large volumes of bovine material [ ] in the upper North Island and has self-rendered in the past.[154]

117. Given these constraints, we consider that the Proposed Acquisition is not likely to substantially lessen competition in the upper North Island market for bovine rendering due to unilateral effects.

The markets for bovine outputs

118. Prior to the fire, both Tuakau and Waitoa both manufactured bovine meal and tallow [ ].[155] The Applicant has submitted that meat processors that self-render or have their material toll processed are also competitors for the sale of outputs and, taking into account these other suppliers of outputs, the merged entities' market share of outputs would be small.[156] This is consistent with our understanding of these markets. As such, we do not

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147 Following our analysis in paragraphs [78]-[83] we have assumed that the Tuakau Plant would operate to some extent independently from the Waitoa Plant in the counterfactual. The Proposed Acquisition would eliminate that competition.

148 See, for example, the Application at [68] and [84].

149 [ ]

150 The Application at [6] and [68]; Commerce Commission interview with [ ].

151 Commerce Commission interview with [ ].

152 Commerce Commission interview with [ ]; Commerce Commission interview with [ ].

153 Commerce Commission interview with [ ]; *Combined Waikato Regional Council & Matamata-Piako Distrct Council Greenlea Premier Meats Ltd Decision* (9 October 2017) at [13].

154 TPL response to Commerce Commission request for information dated 9 October 2020 (23 October 2020); Commerce Commission interview with [ ]; [ ].

155 The Application at [112].

156 The Application at [125].

consider that the Proposed Acquisition is likely to substantially lessen competition for bovine outputs due to unilateral effects.

Coordinated effects of the Proposed Acquisition for bovine markets

119. The Proposed Acquisition would reduce the number of providers of bovine rendering services in the upper North Island from three to two (leaving the merged entity and AFFCO). We have considered whether this could make a substantial lessening of competition from coordination more likely. We consider the Proposed Acquisition is unlikely to increase the likelihood, substantiality and sustainability of such coordination to the extent it would significantly lessen competition:

  119.1 As noted above at [115.1] and [115.2], it is unclear Waitoa Plant is a strong competitor for bovine given the barriers it faces to process A&PM and the prices it can offer as a result. As such, the Proposed Acquisition may not significantly affect the likelihood of coordination.

  119.2 Price coordination may be less likely because rendering arrangements are individually negotiated between renderers and meat processors, which reduces price transparency. Differences in payment regularity (also potentially affecting price) and other terms may also make coordination more difficult to achieve.[157] We also consider that AFFCO and the merged entity could find it difficult to reach a coordinated agreement due to the asymmetries between the market participants. The Tuakau Plant currently services [ ] major bovine meat processors . This would reduce the incentive for the Applicant to coordinate [ ].

  119.3 Larger customers are likely to have the ability to:

    119.3.1 detect coordination by continuing to regularly review prices and other terms via tender systems; and

    119.3.2 disrupt any coordination (at least in respect for themselves) through the threat of building their own rendering plants and self-supplying.

120. For bovine outputs, the Proposed Acquisition would not result in significant aggregation given the number of other suppliers of bovine outputs.

121. As such we consider that the Proposed Acquisition is unlikely to result in a significant lessening of competition due to coordinated effects in any bovine market.

Vertical and conglomerate effects

122. A vertical merger is a merger between firms operating at different levels of a supply chain (for example, a wholesaler and a retailer). Vertical mergers can provide

157 Although output sales prices, often factored into these arrangements, are transparent given rendering outputs are traded as commodities.

merged entities the ability and incentive to foreclose downstream rivals, including by refusing to supply the services (known as “total foreclosure”) or raising the costs of those rivals (known as “partial foreclosure”).

123. At this stage we have not identified any inputs that the merged entity could use to foreclose downstream rivals. The Applicant owns a firm that trades rendering outputs. This firm competes with other traders. However, the Applicant would not be able to foreclose those rivals, because the traders can purchase outputs from other firms that supply outputs such as independent renderers in the South Island and in-house renderers. As such we consider that the Proposed Acquisition is unlikely to result in a significant lessening of competition due to vertical effects in any market.[158]

124. A conglomerate merger is a merger between suppliers (or buyers) of complementary products. The merged entity could provide bundled discounts (where customers buy the products together rather than separately) or may refuse to sell one product unless the customer buys another product (tying). This can harm competition because it may mean a competitor is denied access to sufficient market demand to achieve competitive scale and is hindered from competing (foreclosed) in the market.

125. Neither bundling nor tying appear to be features of the rendering and output markets as customers tend seek out specific products and services rather than combinations. For example, outputs of a specific species and type tend to be bought and sold separately for specific purposes such as for a particular form of animal feed.

126. As such we consider that the Proposed Acquisition is unlikely to result in a significant lessening of competition due to conglomerate effects in any market.

Next steps in our investigation

127. The Commission is currently scheduled to decide whether or not to give clearance to the Proposed Acquisition by 24 June 2021. However, this date may change as our investigation progresses.[159] In particular, if we need to test and consider the issues identified above further, the decision date may extend. The impact of New Zealand’s COVID-19 response may also affect how quickly we can conduct the investigation.

128. As part of our investigation, we will be identifying and contacting parties that we consider will be able to help us assess the issues identified above.

[158] We are considering whether an outcome of the loss of competition between the Tuakau Plant and Waitoa Plant is that [ ] However, this is being assessed as part of the unilateral analysis on the basis it only arises if there is an SLC for poultry rendering.

[159] The Commission maintains a clearance register on our website at http://www.comcom.govt.nz/clearances-register/ where we update any changes to our deadlines and provide relevant documents.

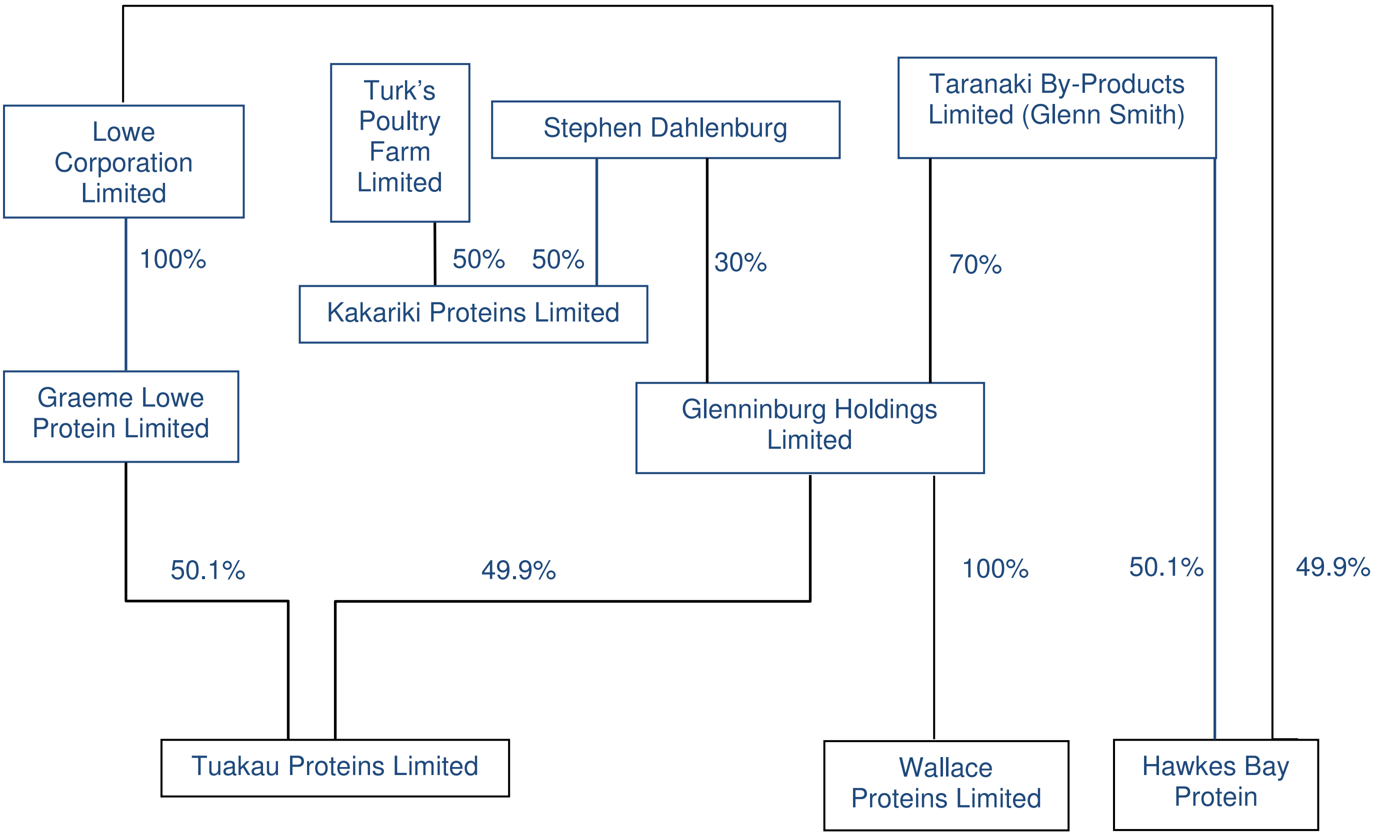
Making a submission

129. We are continuing to undertake inquiries and seek information from industry participants about the impact of the Proposed Acquisition. We welcome any further evidence and other relevant information and documents that the Parties or any interested parties are able to provide regarding the issues identified in this SoI.

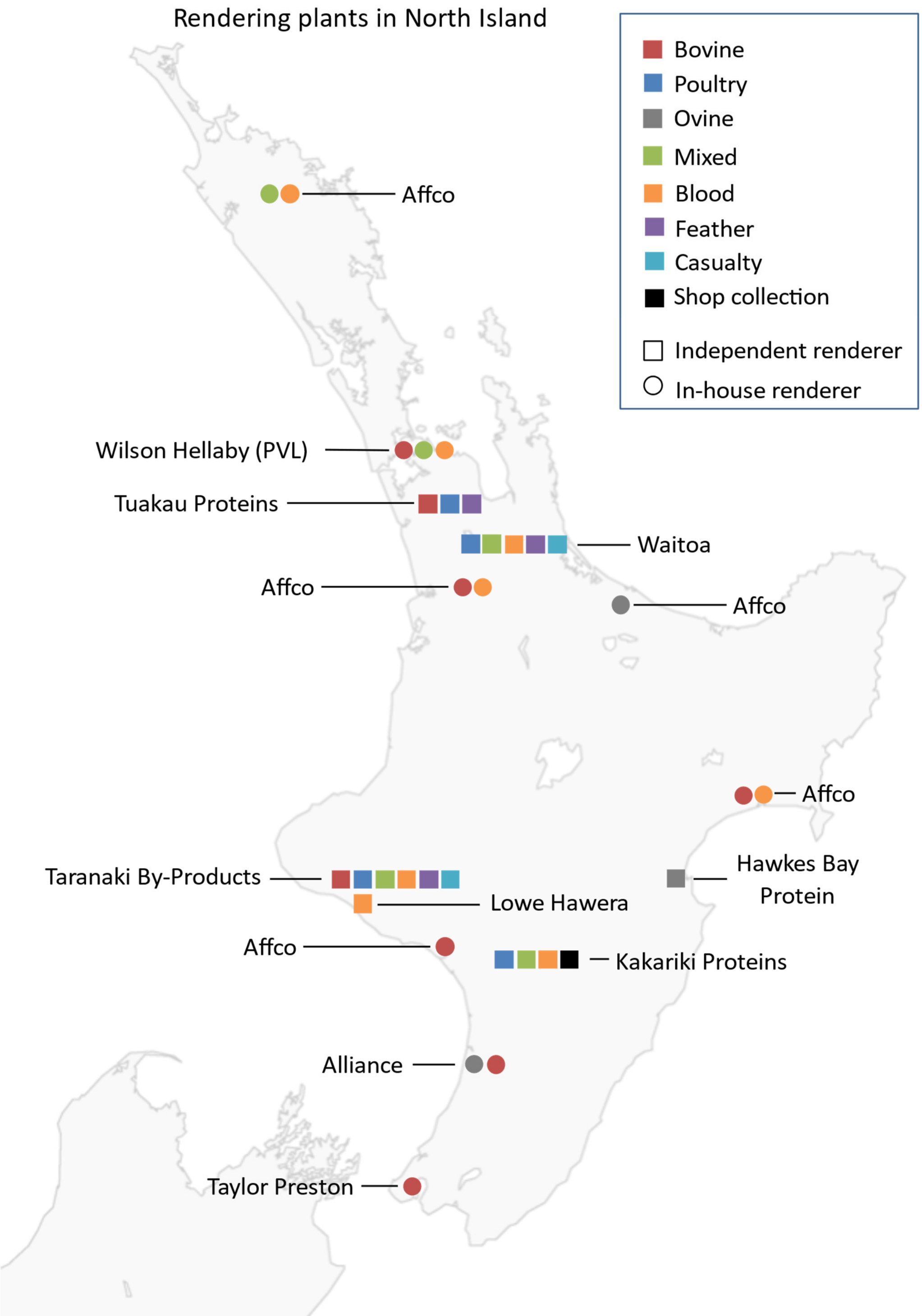
130. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference "Taranaki By-Products/Lowe" in the subject line of your email. We also accept submissions via post to the Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on 2 June 2021.

131. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would be likely to unreasonably prejudice the commercial position of the supplier or subject of the information.

Attachment A: The Applicant's relationship with other renderers



Attachment B: Rendering plants in North Island



Notes: (i) Based on the Application. (ii) For this chart we assume that the Tuakau Plant processes poultry, however the Applicant does not agree. (iii) We include within the bovine and poultry rendering markets, respectively, the blood of those animals. There are some slight differences in the process to render blood compared to other materials such as offal and bone. However, renderers need to be able to accept both materials (such as bone and offal) and blood to compete to provide services to meat processors. Including blood within the main rendering markets does not change the analysis. Similarly, feather is included in the poultry rendering market.