Statement of Issues

21 April 2016

DYWIDAG-Systems International Group – proposed acquisition of Jennmar Australia

Purpose

1. This Statement of issues aims to:
   - give the Australian Competition and Consumer Commission’s (ACCC’s) preliminary views on competition issues arising from DYWIDAG-Systems International Group’s (DSI) proposed acquisition of Jennmar Australia (Jennmar)
   - identify areas of further inquiry
   - give all interested parties an opportunity to comment
   - invite interested parties to submit information to assist us in our assessment of the issues.

Overview of ACCC’s preliminary views

2. The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the Competition and Consumer Act 2010. Section 50 prohibits acquisitions that are likely to have the effect of substantially lessening competition in a market.

3. The ACCC has divided its preliminary views on the proposed acquisition into three categories, ‘issues of concern’, ‘issues which may raise concerns’ and ‘issues unlikely to raise concerns’.

Issues of concern

4. The proposed acquisition will result in the merger of the two largest Australian suppliers of rock bolts to soft rock mines (primarily coal mines) (soft rock bolts). The ACCC’s preliminary view is that the proposed acquisition is likely to substantially lessen competition in a national market for the supply of soft rock bolts.

Issues which may raise concerns

5. The ACCC is considering whether, if the proposed acquisition increases DSI’s market power in the supply of soft rock bolts, DSI would also have an increased
ability and incentive to engage in foreclosure strategies in relation to complementary products – resin, mesh and/or cementitious grout. The ACCC’s preliminary view is that the proposed acquisition may substantially lessen competition in markets for these complementary products by increasing DSI’s ability and incentive to foreclose rivals’ access to customers in those markets.

Issues unlikely to raise concerns

6. The ACCC considers that the proposed acquisition is unlikely to substantially lessen competition in the supply of other rock bolts, including rock bolts to hard rock mines (gold, copper and zinc, and gems such as diamonds) (hard rock bolts) and the supply of cable bolts. The ACCC’s preliminary view is that there are likely to be sufficient alternative suppliers to constrain DSI following the proposed acquisition.

Making a submission

7. The ACCC is seeking submissions from interested parties, particularly on the following key issues:

- The closeness of competition between DSI and Jennmar in the supply of soft rock bolts.
- The likelihood that an alternative supplier would be able to commence supply of soft rock bolts in a sufficiently timely manner and on sufficient scale to constrain DSI following the acquisition, taking into account any barriers to commencing such supply.
- The extent of any competitive constraint from imports, including whether there are any obstacles to supplying imported soft rock bolts to Australian coal mines.
- The likelihood that the proposed acquisition will increase DSI’s ability and incentives to foreclose rivals from competing for customers in markets for related products.

8. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.

9. Interested parties should provide submissions by no later than 12 May 2016. Responses may be emailed to mergers@accc.gov.au with the title: “Submission re: DSI-Jennmar - attention Adelle Low and Nikita Harrison”. If you would like to discuss the matter with ACCC officers over the telephone or in person, or have any questions about this Statement of Issues, please contact Adelle Low on (02) 6243 1204 or Nikita Harrison on (03) 9658 6497.

10. The ACCC anticipates making a final decision on 16 June 2016, however, this timeline can change. To keep abreast of possible changes in relation to timing and to find relevant documents, interested parties should visit the Mergers Register on the ACCC’s website at accc.gov.au/mergersregister.
Confidentiality of submissions

11. The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our *Informal Merger Review Process Guidelines* contain more information on confidentiality.

About ACCC ‘Statements of Issues’

12. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC’s preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.

13. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the parties to the acquisition and other interested parties with the basis for making further submissions should they consider it necessary.

Timeline

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>29 February 2016</td>
<td>ACCC commenced review of the proposed acquisition</td>
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<tr>
<td>21 April 2016</td>
<td>ACCC publication of Statement of Issues</td>
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<tr>
<td>12 May 2016</td>
<td>Deadline for submissions from interested parties in response to this Statement of Issues</td>
</tr>
<tr>
<td>16 June 2016</td>
<td>Anticipated date for ACCC final decision</td>
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The parties

DSI

14. DSI supplies ground control and post-tensioning control systems and concrete accessories to mining, tunnelling and construction customers in more than 90 countries around the world.

15. DSI’s subsidiary DYWIDAG-Systems International Pty Ltd (*DSI Australia*) manufactures and supplies mining support products to the coal mining and hard rock mining industries in Australia, including rock bolts and plates, mesh, resins and cementitious grouts. DSI Australia also has a small civil business which
supplies post-tensioning and geotechnical products to the construction and tunnelling sectors.

16. DSI Australia has rock bolt manufacturing plants in Newcastle, New South Wales; and Perth, Western Australia.

17. DSI Australia also:
   - supplies mesh manufactured by third parties
   - supplies resin manufactured by Rocbolt Resins Pty Ltd (Rocbolt) and others (Rocbolt, previously known as J-LOK Resins Australia, is a joint venture between DSI and Frank Calandra Inc (FCI), which manufactures resin capsules (DSI and Jennmar both distribute resins manufactured by Rocbolt)), and
   - in the civil construction industry, manufactures thread bars for use in geotechnical support and galvanised bolts for use in tunnelling and re-supplies other specialty products.

FCI/Jennmar

18. FCI is a privately owned global company, based in the USA, that manufactures and supplies ground control technology to the mining, tunnelling and civil construction industries.

19. FCI’s subsidiary, Jennmar, manufactures and supplies rock bolts and plates, resins, mesh and cementitious grout primarily to the Australian soft rock mining industry, although it supplies some ground support products for use in hard rock mining applications and to civil construction customers.

20. Jennmar has manufacturing facilities at Sydney, New South Wales; Mackay, North Queensland; and Perth, Western Australia.

21. Jennmar also supplies:
   - cementitious grouts and steel mesh manufactured by third parties, and
   - resin capsules manufactured by Rocbolt.

Other industry participants

22. Ground support product suppliers typically supply their goods and services to mines directly or to mining contractors that operate and manage mines. The ACCC understands that contracts are generally awarded on a non-exclusive basis and do not contain minimum volume requirements.

Ground support product suppliers

23. DSI and Jennmar are the two largest suppliers of soft rock bolts in Australia. DSI and Jennmar are also significant suppliers of hard rock bolts and supply related products including resin, mesh and cementitious grout to soft rock and hard rock mines. Other suppliers of ground support products tend to:
• specialise in the supply of certain products, such as cable bolts, mesh, cementitious grout or resin
• specialise in particular applications, for example hard rock mining, or
• have significantly smaller market shares than DSI and Jennmar.

Fero

24. Fero is a manufacturer and supplier of ground support products to the underground hard rock mining and tunnelling industries. Fero manufactures rock bolts for use in hard rock mining applications and provides ongoing support services including research and development. Fero is a significant supplier of rock bolts to the hard rock mining industry. Fero does not supply soft rock bolts.

Split Set Mining Systems

25. Split Set Mining Systems, also known as Phoenix (Split Set), is a manufacturer and supplier of ground support products to the hard rock mining industry. Split Set manufactures rock bolts for use in hard rock mining applications and provides ongoing technical support and other services. Split Set does not supply soft rock bolts.

Megabolt

26. Megabolt is a manufacturer and supplier of high capacity strata support for underground coal mines. Megabolt specialises in cable bolts and offers a range of support services with its products including onsite testing, installation trials, training and auditing. Megabolt manufactures and supplies cable bolts for soft rock mining, but does not supply soft rock bolts or hard rock bolts.

Minova

27. Minova is a division of Orica which provides ground support products to the mining, civil, tunnelling, geotechnical and construction industries. Minova offers ground support products, including rock bolts, and associated services. Market feedback indicates that Minova is best known within the Australian ground support industry for its resin products.

Tonry

28. Shandong Tongrui Mining Technology Co Ltd (Tonry) is a Chinese manufacturer and supplier of rock bolts and complementary ground support products. The ACCC understands that Tonry does not currently have an on-the-ground presence in Australia.

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1 orica.com/news---media/orica-re-establishes-minova-brand-as-ground-control-leader#.VvsPSNS4aUJ
Industry background

Ground support products

29. Ground support products are required to maintain the stability of openings and tunnels prior to, during and after excavation. Ground support products are required in relation to underground mining for both ‘hard rock’ mining (gold, copper and zinc, and gems such as diamonds) and ‘soft rock’ mining (primarily coal, but also salt), and also in relation to some road and infrastructure projects.

30. The ACCC understands that DSI and Jennmar have a limited presence in the civil construction industry. Accordingly, this Statement of Issues focuses on the supply of ground support products to mines.

31. Ground support products used in mining operations include rock bolts, and complementary products including resin, mesh and cementitious grout.

Rock bolts

32. Rock bolts are long steel rods of up to 3 metres in length that are used to provide support to the roof (roof bolts) and sides (rib bolts) of an underground mine. The ACCC understands that hard rock bolts and soft rock bolts are used as the primary support in hard rock and soft rock mines respectively. Roof and wall support may also be provided by ‘cable bolts’ which are longer and more flexible. The ACCC understands that cable bolts are mostly used for secondary support, providing additional reinforcement after hard rock bolts and soft rock bolts are already in place. For the purposes of this SOI, references to rock bolts exclude cable bolts unless otherwise indicated.

33. Rock bolts are generally made from steel reinforcing bar. Steel bars of differing tensile strength are required for soft rock and hard rock mines. Arrium (OneSteel) is the sole manufacturer in Australia of steel reinforcing bar. The ACCC is aware that Arrium (OneSteel) has recently gone into voluntary administration, and the future of its supply of steel bar for rock bolts is yet to become clear. The ACCC understands some steel reinforcing bar may be imported by rock bolt manufacturers.

34. Rock bolts are inserted into drilled holes in the roof or walls of the mine. Rock bolts vary according to the mechanism used to secure them into the rocks. They are typically secured with resin, cementitious grout or a mechanical anchor. Hard rock miners often use friction bolts, which are secured into the rock by the force of the bolt itself. All rock bolts are installed with a metal plate which sits on the exterior of the rock and provides extra support.

35. The category of bolt used in an excavated space is determined by a range of factors, including the geological conditions of the area (and if it is a mine, whether the mine is hard rock or soft rock), the price, the ease of bolt installation, and whether the environment is corrosive.

36. The ACCC understands that soft rock bolts generally differ from hard rock bolts in terms of diameter, threaded profile and strength of the steel input; these characteristics are in part due to the geological conditions of soft rock mines – soft rock is not usually as strong and is less stable than hard rock.
Complementary products – resin, mesh and cementitious grout

37. Rock bolts are used in conjunction with resin, mesh and cementitious grout. Resin and cementitious grout are used to secure rock bolts into the roof or wall of an underground mine. Mesh is placed along the surface of the roof or wall to prevent loose rock falling into the mine.

Figure 1: DSI ground support products installed in an underground coal mine


Support services

38. Ground support products support the roof and walls of underground mines. Customers have consistently reported that the importance of rock bolts to the safety of the mine influences their choice of rock bolt supplier.

39. Market participants have stated that the service element that suppliers provide in conjunction with their supply of ground support products (in particular rock bolts) is a key factor contributing to customers’ choice of supplier. A number of customers identified on-the-ground support services provided by DSI and Jennmar as being critical to their mining operations. These services include quality assurance, training, testing, auditing and research/development (including joint product development and trials).

The proposed transaction

40. DSI proposes to acquire the Jennmar Australia ground support business from FCI. The proposed acquisition is one of a number of related global transactions:

   a. DSI has acquired FCI’s ground support businesses in Latin America and Europe
b. DSI has acquired a 50% interest in Jennmar China

c. FCI has acquired DSI’s mining ground support business in the United States.

41. DSI will also acquire an additional 1 per cent interest in Rocbolt, resulting in DSI and FCI having equal equity interests in this joint venture in Australia.

**Future with and without the acquisition**

42. Section 50 of the Act prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market.

43. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the “with” position) to the likely future competitive environment if the acquisition does not proceed (the “without” position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.

44. On the basis of the information currently available, the ACCC considers that, in the absence of the proposed acquisition, Jennmar would be likely to remain as a competitor to DSI in the supply of ground support products, in particular soft rock bolts and complementary products, in Australia.

**Market definition**

45. The ACCC’s starting point for delineating relevant markets to assess the competitive effects of the proposed acquisition involves identifying the products actually or potentially supplied by the parties, with particular reference to those areas where they ‘overlap’ in their business activities. The ACCC then considers what other factors are likely to apply a significant source of constraint to the parties after the acquisition. These can be considered from a range of perspectives, including with respect to product and geographic dimensions.

**Areas of overlap**

46. DSI and Jennmar overlap in the supply of the following ground support products:

- soft rock bolts
- hard rock bolts
- cable bolts
- resin
- mesh, and
- cementitious grout.

47. After the acquisition, DSI will be the largest supplier of soft rock bolts and hard rock bolts in Australia. DSI will also be a significant supplier of cable bolts, resin, mesh, and, to a lesser extent, cementitious grout.
48. Market participants report that DSI and Jennmar compete closely with each other and are the two main soft rock bolt suppliers. The ACCC understands that a combined DSI-Jennmar will account for the vast majority of supply of soft rock bolts (excluding cable bolts) to soft rock customers in Australia. Some market participants also consider that DSI and Jennmar are the only domestic suppliers who currently offer the full range of ground support products required for soft rock mining, including all the different types of rock bolts and complementary products. Other suppliers specialise in niche or complementary products, or other applications such as hard rock mining.

Product dimension of the relevant market

49. The ACCC considers that the key area of competitive overlap between DSI and Jennmar is in the supply of rock bolts, and in particular the supply of soft rock bolts. An important question is whether the supply of soft rock bolts constitutes a separate relevant market. This section considers the extent to which hard rock bolts or cable bolts may be demand or supply side substitutes for soft rock bolts.²

Customer alternatives to soft rock bolts

50. Market inquiries to date indicate that soft rock bolts are unlikely to be substitutable, from a customer perspective, with hard rock bolts in most applications. The ACCC understands that rock bolts used in soft rock mining compared to hard rock mining generally have different characteristics. As noted above, soft rock bolts can differ from hard rock bolts in terms of diameter, threaded profile and strength of the steel input.

51. The ACCC understands that cable bolts are primarily used at the secondary support stage in soft rock mining (after the soft rock bolts are already in place). Initial market feedback indicates that cable bolts are a considerably more expensive product, so are only used when other rock bolts are not suitable. The ACCC does not consider that cable bolts are a close substitute for other types of rock bolts from a customer perspective.

52. The ACCC’s preliminary view is that there is weak demand-side substitutability between soft rock bolts, hard rock bolts and cable bolts.

Supply side opportunities

53. Other ground support products may be in the same market as soft rock bolts if manufacturing facilities and distribution networks can be easily and profitably switched to soft rock bolts.

54. Market participants have indicated that hard rock bolt manufacturing facilities can be re-tooled relatively easily to produce soft rock bolts and vice versa. This indicates there is the potential for supply-side substitutability between manufacturers of hard and soft rock bolts.

² This Statement of Issues does not define separate markets for the supply of hard rock bolts or cable bolts. This is because the ACCC’s preliminary view is that the proposed acquisition would not be likely to lead to a substantial lessening of competition in such markets. This is discussed further at paragraphs 107 to 109.
55. However, the ACCC considers that such substitution may nevertheless be impeded by other factors. A manufacturer which has not previously supplied soft rock bolts would need to establish a reputation for the safe supply of soft rock bolts, before it could win enough customers to operate at the scale necessary to be competitive. It would need to make related investments including product development, engaging staff with relevant expertise, and establishing a distribution network including warehousing premises (given the different locations of soft rock mines and hard rock mines).

56. These factors call into question the extent to which suppliers of hard rock bolts would be likely to constrain DSI effectively if the proposed acquisition proceeded. These issues are considered further below in the context of barriers to entry.

57. The ACCC understands that cable bolts are produced using different machinery that cannot be easily retooled to produce hard rock or soft rock bolts.

58. The ACCC’s preliminary view is that the key relevant market is for the supply of soft rock bolts, but not cable bolts or hard rock bolts. However, the ACCC considers that existing suppliers of hard rock bolts are better placed than cable bolt suppliers to enter into the soft rock bolt market. The ACCC continues to consider the extent to which hard rock bolt suppliers could start supplying soft rock bolts.

Geographic dimension of the market

59. Market inquiries to date suggest that the proposed acquisition should be considered in the context of national markets.

60. Based on the information received to date, the ACCC considers it may not be necessary for rock bolt manufacturing facilities to be located close to customer mine sites. Rock bolts can be transported within Australia, although it is important for suppliers to have warehousing or distribution facilities located fairly close to a customer’s mine. In addition to DSI and Jennmar’s manufacturing facilities which are outlined above at paragraphs 16 and 20 respectively, DSI and Jennmar both operate supply centres close to major mining regions.

61. The ACCC is continuing to consider the extent to which it is advantageous for a rock bolt supplier to have manufacturing facilities in close geographic proximity to the mines it supplies.

Preliminary view on relevant markets

62. Based on information received by the ACCC to date, the ACCC’s preliminary view is that the market most relevant for assessing the competition effects of the proposed acquisition is a national market for the supply of soft rock bolts. Other markets of relevance are national markets for the supply of each of the following:

- hard rock bolts
- cable bolts
- resin
- mesh, and
cementitious grout.

The ACCC invites comments from market participants on its preliminary views about the definition of the relevant market(s). In particular, market participants may wish to comment on:

- The extent to which soft rock, hard rock and cable bolts are interchangeable from a customer's perspective, noting particularly any situations in which it may be possible to use one type of bolt in place of another.
- The extent to which rock bolt suppliers can quickly and easily switch between supplying soft rock, hard rock and cable bolts, noting particularly any commercial, reputational, contractual or regulatory barriers to switching.
- Whether the ACCC’s preliminary market definition of the national supply of soft rock bolts is appropriate, or if the relevant market should be for the supply of hard rock and soft rock bolts. Please provide reasons for your answer.

**Issue of concern: lessening of competition in the supply of soft rock bolts**

63. The ACCC’s preliminary view is that the proposed acquisition is likely to substantially lessen competition in the supply of soft rock bolts by providing DSI with increased ability to raise prices and lower service quality.

64. The proposed acquisition would unite the only two significant suppliers of soft rock bolts (excluding cable bolts), resulting in only one major supplier of soft rock bolts. DSI and Jennmar are each other’s closest competitors and likely to be the greatest competitive constraint on each other. The proposed acquisition would eliminate competition between them.

65. There may be potential for suppliers of hard rock bolts to enter the market for the supply of soft rock bolts to compete with DSI. However, these potential suppliers are unlikely to replace the close competitive constraint that DSI and Jennmar currently impose on each other.

66. The ACCC notes that Jennmar has been the only significant new entrant into the soft rock bolt market for around 20 years. Market inquiries to date have indicated that there are likely to be a number of barriers to entry, described below, which may limit the prospects of new entry into the supply of soft rock bolts.

**Closeness of competition between DSI and Jennmar**

67. The ACCC understands that customers generally select their rock bolt supplier via competitive tender processes, for contracts which are generally of 1 to 3 years in duration, and may include options to extend. DSI and Jennmar are the two main participants in these tender processes. Customers can use tender processes to improve their terms of supply without necessarily switching supplier.

68. In addition to price, an important aspect of competition between suppliers is the support services they provide to mining customers. Market inquiries have indicated that Jennmar is a leader in both price and service quality and is a
significant source of competitive tension to DSI (as DSI is to Jennmar) in soft rock bolt tender processes.

69. The ACCC considers that competition between suppliers is also likely to occur on the basis of product development and innovation. The ACCC understands that the design of rock bolts is continually evolving to suit different types of geographic terrain, including some that are specific to Australia, and to save installation time, which is highly valuable to customers. Because of the large number of rock bolts installed in each mine, even a few seconds’ time saving per bolt can add up to a substantial efficiency saving.

70. Market feedback indicates that DSI and Jennmar compete on innovation, including trying to replicate each other’s product offerings, which benefits customers. Market participants noted that prior to Jennmar’s entry into Australia prices were higher and there was limited innovation. The ACCC is considering whether, after the acquisition, in the absence of competition between DSI and Jennmar, there may be reduced competition and reduced incentive for innovation.

Barriers to entry

71. As noted above, the ACCC considers that a key question in this matter is whether new entry into the supply of soft rock bolts is likely, and whether it would be sufficiently timely and on a large enough scale to constrain DSI after the proposed acquisition. If DSI knows that entry would be timely, likely and sufficient, it may be constrained from increasing prices or decreasing service levels following the proposed acquisition. However, if there are significant barriers faced by other potential suppliers, the threat of entry may be insufficient to constrain DSI after the acquisition.

72. A number of barriers to entry have been identified during the course of market inquiries.

73. The ACCC is considering whether some of these barriers may be lower for hard rock bolt suppliers seeking to enter the soft rock bolt market, compared to the situation for other entrants.

74. However, market participants indicate that new entry into the supply of soft rock bolts has been limited and, with the exception of Jennmar nearly twenty years ago, generally unsuccessful. The barriers described below may explain this history.

Ability to achieve economies of scale

75. Market feedback indicates the industry is characterised by economies of scale. Larger suppliers can access significant volume discounts on the purchase of steel, which represents the majority of the costs of production. After the proposed acquisition, DSI may be able to access economies of scale through:

- volume discounts in purchasing the steel from which rock bolts are manufactured
- rationalisation of manufacturing and distribution facilities.

76. The ACCC notes that any such economies of scale may represent economic efficiencies. However, if a new supplier of soft rock bolts cannot quickly achieve
sufficient scale to capture similar efficiencies, they may perceive economies of scale to be a barrier to entry. To the extent there is customer inertia and/or stickiness in terms of being willing or able to move to a new supplier due to reputational considerations, and/or the existence of significant supplier contracts, a new entrant may need to provide services at a loss for a considerable period of time before it can match the scale advantages of an incumbent. Such losses could represent a significant barrier to entry for a potential new supplier of soft rock bolts.

Reluctance to switch suppliers

77. The ability of new entrants to pose a credible threat of entry depends in part on being able to win customer contracts. In this respect, the ACCC considers there may be some reluctance on the part of customers to switch suppliers.

78. The ACCC understands that customers and suppliers undertake extensive collaboration including:

- ensuring that products meet the technical requirements of the mine and are tested on the mine site
- developing new products, and
- establishing systems and procedures for a range of functions including installation, safety and stock management.

79. Market inquires have indicated that switching to a new provider is likely to involve costs, including testing and collaborating on different products and establishing new systems and procedures. These processes are also likely to be time consuming, with the potential to delay operations at the mine. Established suppliers such as DSI and Jennmar may be better placed to overcome these incumbency advantages.

80. In addition, given that rock bolts are critical to ensuring safety in mines, a supplier’s reputation for quality and safety is extremely important to customers. Market inquiries have suggested that overcoming the reputational advantages held by an incumbent in terms of reliability and safety would be a significant barrier for a potential new supplier of soft rock bolts.

81. Customers have also suggested that some rock bolts and ancillary products are subject to patents, which may raise a further barrier to entry in terms of being able to match DSI’s product offering and research and development.

82. The ACCC considers that an established ground support provider, such as a provider of hard rock bolts, to some extent may be able to rely on an already established reputation for quality and safety. This may better enable it to overcome some of the switching costs than a new entrant without experience in ground support supply.

Support services

83. As noted above, suppliers of rock bolts provide extensive ancillary support functions. Market inquiries have indicated that customers find these support services essential, and that the quality and availability of such support is critical to their choice of rock bolt supplier.
84. Some customers said they could not supply these services in-house, and overseas suppliers could not offer them without an arrangement with a local, established distributor. Customers have not, so far, identified the use of third party consultants as an alternative option. The ACCC has received a range of views as to the barriers facing entrants who wish to commence supplying these services. Some market participants have stated that the supply of these services may be relatively straightforward. The ACCC is continuing to investigate the ease and timeliness with which new suppliers of soft rock bolts could supply these services.

85. The ACCC considers that a new supplier of soft rock bolts would require on-the-ground staff with the relevant technical expertise to work with onsite mine staff on a range of support functions. The ACCC is continuing to investigate the extent to which existing suppliers of ground support products, particularly hard rock bolts, would currently have some of that expertise or the ability to quickly and easily obtain it at relatively low cost in a manner that meets customers’ requirements.

Demand for ground support in coal (the main type of soft rock)

86. World coal prices peaked in 2011-2012 and have since declined dramatically, as global production has exceeded demand. Black coal mining has experienced a compounded average annual decline of 6.5 per cent over the past five years, although industry analysis suggests that increased demand for coal and projected depreciation of the Australian dollar may make Australian coal comparatively more affordable and result in some market growth in coming years.\(^3\)

87. Market feedback suggests the ground support industry is currently in a position of over-supply, particularly for the coal industry, and some market participants have stated that new entry is unlikely while the market continues to decline.

Ability to offer a range of products

88. The ACCC is considering the extent to which customers prefer suppliers who can provide an extensive range of ground support products. Market inquiries indicate that some customers tender for a range of products including rock bolts, resin, mesh and cementitious grout, while others prefer to tender category by category.

89. DSI and Jennmar can supply the full range of ground support products. This may provide an advantage in tender processes over other potential suppliers of soft rock bolts that do not currently supply all these products. The ACCC is continuing to investigate the importance to customers of having a single supplier, and the difficulty, if any, a new entrant might face in offering a full product range.

Imports

90. The ACCC is considering the level of competitive constraint that might be provided by imports – either through customers importing rock bolts directly, or local suppliers importing them for distribution. The ACCC understands that

\(^3\) IBISWorld, Black Coal Mining in Australia, September 2015.
imports of rock bolts have been limited to date, but there are overseas suppliers interested in supplying to Australia, and in establishing links with Australian distributors and/or customers.

91. Market inquiries suggest that there are a number of obstacles to customers importing soft rock bolts directly, including:

- freight costs
- setting up a reliable logistics chain to ensure regular and timely availability of products
- the need to regularly test products for quality and safety, and
- absence of an on-the-ground presence for support services.

92. The ACCC is considering the obstacles identified and what would be involved in overcoming them.

93. The ACCC’s preliminary view is that while customers are unlikely to import soft rock bolts directly, imports may be a more viable option for companies with existing ground support businesses in Australia. Local distributors may be able to conduct ongoing quality testing themselves and make quality assurances to customers, as well as provide local support services. However, concerns about reliability of supply may mean that imports are not viable as a primary source of supply.

94. The ACCC has received a range of views in relation to imports, and is continuing to investigate the circumstances in which customers or suppliers might consider importing soft rock bolts.

95. The ACCC is also continuing to investigate the extent to which some of these barriers might be overcome by overseas manufacturers entering the Australian market by establishing a local presence.

Countervailing power

96. Given that ground support is a significant expense for mines, the ACCC is considering the extent to which large mining companies would be likely to establish their own manufacturing facilities, sponsor new entry or directly import soft rock bolts in the event that DSI sought to raise prices or decrease service quality.

97. Market inquiries to date indicate that:

- Customers will not consider manufacturing ground support products themselves.

- Customers are unlikely to import soft rock bolts directly, for the reasons noted above.

- Sponsoring a new local supplier/distributor may be possible but it is not clear under what circumstances customers would consider this as an option. Market inquiries indicated that many customers do not consider they have the expertise to do this, or they do not see the market as being attractive to a new entrant.
ACCC’s preliminary views

98. The ACCC’s preliminary view is that the proposed acquisition is likely to lead to a substantial lessening of competition in the national market for the supply of soft rock bolts, such that DSI is likely to be able to increase prices, decrease service levels and/or reduce innovation following the proposed acquisition. Barriers to entry are likely to limit the ability for other potential suppliers to adequately constrain DSI.

99. The ACCC is considering whether established local suppliers of other ground support products, particularly hard rock bolts, are likely to be able to compete in the supply of soft rock bolts in a way that is sufficient and timely enough to pose a strong competitive constraint.

The ACCC invites comments from market participants on its concerns in relation to the supply of soft rock bolts. In particular market participants may wish to comment on the following:

- Why, with the exception of Jennmar, there has been limited new entry into the supply of soft rock bolts in the last twenty years.

If you are a customer of soft rock bolts:

- The extent to which DSI and Jennmar compete to supply soft rock bolts. Please comment on how this competition occurs with respect to price, service and/or product innovation.
- Whether you have switched suppliers before. Please provide details.
- Your ability and willingness to switch, and under what circumstances you would consider switching. Please note particularly the time it would take, costs and any product testing that would be involved.
- Whether you would consider importing soft rock bolts directly, or purchasing imported soft rock bolts from an Australian distributor. Please state your reasons, including how much local prices would need to increase for you to consider imports as a viable option.
- The extent to which it is important for a supplier of soft rock bolts to have a presence in Australia. Please state your reasons.
- The extent to which service is relevant to your choice of soft rock bolt supplier, including whether you would consider purchasing soft rock bolts from a supplier who does not offer ongoing service, and if you would perform ground support services (like product training, quality testing and auditing services) in house or using a geotechnical consultancy service, or other third party.

If you are a supplier of ground support products:

- The process for a new entrant to supply soft rock bolts. Please comment on start-up costs (including facilities and machinery, access to inputs, the provision of service, establishment of distribution channels), and any incentives or disincentives to entry of which you are aware. Please comment on whether entry may be easier for potential entrants who already supply hard rock bolts.
- The extent to which DSI’s and Jennmar’s product patents give them an advantage over a potential new entrant into soft rock bolts.
- The extent to which you consider imports are a viable supply source for your business, noting particularly whether you currently rely on imports either as a
primary or secondary source of supply for rock bolts, and whether this is likely to change given the voluntary administration of Arrium. Please comment in relation to inputs (particularly steel) as well as finished products.

- The level of service you provide with your products and whether you, or your customers, outsource any of this service to geotechnical consultants or other third parties.

**Issue which may raise concerns: foreclosing rivals’ access to customers in markets for related products**

100. The ACCC’s preliminary view is that the proposed acquisition may substantially lessen competition by increasing DSI’s ability and incentive to foreclose rivals from competing for customers in markets for related products following the acquisition. If the proposed acquisition increases DSI’s market power in the supply of soft rock bolts, DSI may engage in foreclosure strategies to prevent rivals from competing for customers in related markets (such as resins, mesh and cementitious grout), or raise rivals’ costs in those markets.

101. A brief overview of these related product markets, including DSI’s and Jennmar’s current position in each, is outlined below.

102. **Resin:** DSI and FCI (Jennmar’s current owner) are currently participants in a joint venture, Rocbolt, which manufactures resin capsules and which the ACCC understands would continue to do so post-acquisition. While the proposed acquisition will result in the loss of Jennmar as a competing distribution channel to DSI, initial market feedback indicates that Minova is a strong existing competitor in the supply of resins.

103. **Mesh:** DSI and Jennmar currently supply mesh manufactured by third parties; they do not produce mesh products themselves. Market feedback indicates there are a range of existing local mesh manufacturers and overseas suppliers used by ground support customers and that there appear to be fewer logistical and other issues with importing mesh as opposed to rock bolts. Barriers to entry or expansion appear to be lower than in relation to rock bolts.

104. **Cementitious grout:** Based on the information available there is limited competitive overlap between DSI and Jennmar in relation to cementitious grout. There are numerous cementitious grout suppliers, which between them have significant market share. Barriers to new entry, or expansion by existing cement suppliers, appear to be lower than for rock bolts and imports are readily available.

105. If these markets are assessed individually, the proposed acquisition is unlikely to lead to horizontal aggregation effects.

106. However, following the acquisition, if DSI has market power in soft rock bolts, it may have the ability and incentive to compel (or strongly incentivise) customers to purchase a bundle of its own ground support products. This may in turn lessen competition in the related product markets.

The ACCC invites comments from market participants on its concerns in relation to the ability of DSI to foreclose rivals from competing for customers in markets for related products. In particular, market participants may wish to comment on the following:
The likelihood that the proposed acquisition will increase the ability or incentive of DSI to withhold supply of soft rock bolts unless customers also purchase other products.

Practical examples of how DSI could foreclose rivals from access to markets for related products.

**Issue unlikely to raise concerns: the supply of other rock bolts**

107. The ACCC considers that the proposed acquisition is unlikely to substantially lessen competition in the supply of hard rock bolts and the supply of cable bolts.

108. The ACCC’s preliminary view is that there are likely to be sufficient alternative suppliers of hard rock bolts that would be able to constrain DSI post-acquisition. In particular, the ACCC notes the presence of a number of existing hard rock bolt suppliers including Fero, Split Set and Minova.

109. The ACCC’s preliminary view is that Megabolt is likely to be able to constrain DSI after the acquisition in relation to cable bolts, given Megabolt’s significant position in cable bolts.

The ACCC invites comments from market participants in relation to the supply of other rock bolts.

**ACCC’s future steps**

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

111. As noted above, the ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC’s assessment of this matter. Submissions are to be received by the ACCC no later than 12 May 2016 and should be emailed to mergers@accc.gov.au.

112. The ACCC intends to publicly announce its final view by 16 June 2016. However the anticipated timeline may change in line with the Merger Review Process Guidelines. A Public Competition Assessment for the purpose of explaining the ACCC’s final view may be published following the ACCC’s public announcement.