



Australian
Competition &
Consumer
Commission

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Statement of Issues — Woolworths Limited and Lowe's Companies Inc (Joint Venture) – proposed acquisition of G Gay & Co hardware stores in Ballarat

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition of the assets of three hardware stores owned by G Gay & Co by Woolworths Limited (**Woolworths**) and Lowe's Companies Inc (**Lowe's**) (**Joint Venture**) (**Proposed Acquisition**).
2. 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.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website at www.accc.gov.au) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 1 June 2012 and anticipates making a final decision by 5 July 2012. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at www.accc.gov.au/mergersregister.
4. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

Background

5. On 13 February 2012, the Joint Venture provided its submission seeking informal clearance from the ACCC in respect of the Proposed Acquisition.

The parties

Woolworths Limited and Lowe's Companies Inc (Joint Venture)

6. Woolworths is a large Australian retailer whose businesses include the Big W chain of discount department stores, Woolworths and Safeway supermarkets, and electronics, liquor and petrol retailing chains.
7. Lowe's is a large, US based hardware and home improvement retailer. Lowe's operates over 1,600 'big box'¹ home improvement stores throughout the United States and Canada. Lowe's only Australian operations are through its involvement in the Joint Venture, and its joint ownership of Danks Holdings Limited (**Danks**), also with Woolworths.
8. In late 2009, Carboxy Pty Limited (**Carboxy**), being another joint venture vehicle of Woolworths and Lowe's, acquired Danks, a wholesaler of hardware products and related services.
9. Danks' principal business is the wholesale distribution of hardware products and related services to independently owned and operated hardware retailers including Danks member stores and other non-affiliated stores. Danks members operate stores under the banners of "Home Timber and Hardware", "Thrifty Link Hardware" and "Plants Plus Garden Centres." In addition to supplying products at the wholesale level, Danks provides members with guidance as to product pricing and retail strategies, marketing and promotional services.
10. The Joint Venture owns and operates Masters stores, a recent 'big box' format entrant into the hardware and home improvement retail sector in Australia. The Joint Venture currently has eight stores in Australia and is in the process of opening a number of further Masters stores.
11. The Joint Venture plans to commence development of a site at 25-51 Learmonth Road in Wendouree, Victoria shortly and expects to begin trading a Masters store at the site in 2013 (**Masters**).

G Gay & Co

12. The three stores owned by G Gay & Co that are the subject of the Proposed Acquisition (**Gay Stores**), are privately operated businesses in the Ballarat area of Victoria. The Gay Stores consist of the following three multi-category retail stores, which sell a wide range of hardware and home improvement products:
 - a. Home Timber and Hardware Ballarat, a hardware and home improvement store with a trade offer and a do-it-yourself (**DIY**) offer² located at 727 Gillies Street, Ballarat;

¹ 'Big box' stores are generally characterised by their large format and range of products. In previous reviews, the ACCC has found that big box stores are generally considered to be 'destination' stores – that is, stores to which customers are prepared to travel specifically to visit.

² Market inquiries indicated that hardware retailers have two distinct types of customers. Some retailers cater to both types of customers, while others focus on a particular customer group. These

- b. Home Timber and Hardware Wendouree, a hardware and home improvement store with a trade offer and a DIY offer located at 810 Howitt Street, Wendouree; and
 - c. Ballarat Building Suppliers, a hardware and home improvement store with a trade focus and a DIY offer located at 717 Main Road, Ballarat East.
13. The Gay Stores operate as part of the 'Home Hardware' banner group. This means that the Gay Stores adopt the Home Hardware brand, marketing materials and promotions. In addition to the Gay Stores being required to price advertised products to comply with prices published in the 'Home Hardware' marketing materials, to some extent Danks (owned by the Joint Venture) also guides the Gay Stores in the product ranges and prices to offer. The Gay Stores also acquire a sizeable proportion of products at the wholesale level from Danks.

Woolworths-Danks s87B undertakings

14. In order to address competition issues identified by the ACCC in relation to the Joint Venture's proposed acquisition of Danks, on 11 November 2009 the ACCC accepted court enforceable undertakings pursuant to section 87B of the *Trade Practices Act 1974* – now the *Competition and Consumer Act 2010 (Act)*.³
15. Among other commitments, the parties have undertaken, for the next 10 years:
- a. not to prevent or hinder an existing Danks member from terminating their membership agreement, for instance if that member wished to switch to another banner group or obtain wholesale supply from another source; and
 - b. not to provide less favourable terms and conditions for the supply of goods or services to any store located within a 10km radius of a Masters store than the terms and conditions enjoyed by similar stores supplied by the parties elsewhere⁴.

The proposed acquisition

16. The Joint Venture proposes to acquire the three Gay Stores in the Ballarat area from G Gay & Co.

customer types are: (1) **trade customers**, who purchase hardware to complete construction, renovation or other projects for which they have been employed. Examples include painters, plumbers and builders; and (2) **DIY or retail customers**, who are typically those who purchase hardware products to complete projects often within their own homes, and for which they are unpaid.

³ A copy of the undertaking is available on the ACCC's website at the undertakings register (see www.accc.gov.au, following the link to public registers).

⁴ In the Section 87B undertaking given to the ACCC by the Joint Venture dated 11 November 2009, the geographic scope of the obligations was 5 kilometres. On 2 June 2010 this undertaking was varied to expand the geographic scope to 10 kilometres.

Other industry participants – Ballarat

Bunnings

17. Bunnings is a large retailer of hardware and home improvement products, operating a number of warehouse ‘big box’ format and small format stores in Australia.⁵
18. In the Ballarat area, Bunnings has two stores:
 - a. Bunnings Warehouse, a hardware and home improvement store with a trade offer and a DIY offer located at 306 – 312 Creswick Road, Ballarat; and
 - b. Bunnings Trade Centre, a trade outlet located at 66 Warringa Drive, Mitchell Park.

Dahlsens

19. Dahlsens is a family-owned business which comprises of a number of medium-large format stores retailing hardware and home improvement products to trade and DIY customers at 29 locations in Victoria and New South Wales.⁶
20. In the Ballarat area, Dahlsens has a hardware and home improvement store with a trade offer and a DIY offer located at 63 Albert Street, Sebastopol.

Independent multi-category retailers

21. In addition to the merger parties and market participants mentioned above, there are also independent hardware and home improvement retailers in the Ballarat area, which are not members of any banner group, but which supply a range of products from a limited number of product categories. While these multi-category retailers supply from more than one product category, they do not supply the range of products from as many product categories as the Gay Stores do.⁷
22. In the Ballarat area, independent multi-category hardware retailers are:
 - a. Robert Sim Building Supplies, a hardware and home improvement store with a trade offer and a DIY offer located at 102 Humffray Street, South Ballarat;
 - b. Whitehead Timber Sales, a hardware and home improvement store with a trade offer and a DIY offer located at 831 Creswick Road, Ballarat; and

⁵ Bunnings is part of the Wesfarmers Group, an ASX-listed Australian company with business activities across a range of industries. In addition to hardware and home improvement, the Wesfarmers Group operates supermarkets, liquor stores, discount department stores and office supply stores.

⁶ This includes three truss and frame manufacturing sites and one metal roofing centre.

⁷ The multi-category retailers in the Ballarat area which are listed here are focussed on the supply of timber and building supplies.

- c. Ross Street Building Supplies, a hardware and home improvement store with a trade offer and a DIY offer located at 3 Ross Street, Ballarat.

Specialty retailers

- 23. There are a number of stores in the Ballarat area which retail a range of hardware and home improvement products within a particular product category. For example, *Reece* sells a range of plumbing products, *Total Tools* sells a range of tools and *Formosa Gardens Plants Plus* sells a range of garden products.

Wholesale suppliers

- 24. Hardware and home improvement retailers purchase products from wholesalers and/or manufacturers, either directly or with the support of buying groups. Wholesale suppliers include the Joint Venture (through Danks) and Mitre 10.

Market inquiries

- 25. On 13 February 2012 the ACCC commenced market inquiries regarding the Proposed Acquisition. The ACCC received information from a range of interested parties.
- 26. The ACCC now invites further information from interested parties to assist with its investigation as set out below.

With/without test

- 27. In assessing a merger pursuant to section 50 of the Act, the ACCC considers the effects of the transaction by comparing the likely competitive environment if the transaction proceeds (the 'with' position) to the likely competitive environment if the transaction does not proceed (the likely 'without' or 'counterfactual' position) to determine whether the acquisition is likely to substantially lessen competition in any relevant market.
- 28. On the basis of its inquiries to date, the ACCC's preliminary view is that in the event that the Joint Venture does not acquire the Gay Stores:
 - a. The Joint Venture is likely to become a new entrant multi-category retailer of a full-range of hardware and home improvement products through its Masters store model targeting retail/DIY and trade customers in the Ballarat area in the foreseeable future. It will also continue to be a wholesaler of hardware products to independent retailers of hardware and home improvement products through its Danks subsidiary.
 - b. The Gay Stores and the Masters store will separately retail a range of hardware products in the Ballarat area for the foreseeable future. The Gay

Stores continued independent competition may or may not be in association with the Home Hardware banner group.⁸

Market definition

29. The ACCC's preliminary view is that the competitive effects of the Proposed Acquisition should be assessed in the context of a local market for the retail supply of hardware and home improvement products in the Ballarat area.⁹

Retail offerings

30. The Joint Venture intends to develop a Masters store on Learmonth Road, Wendouree, a suburb of Ballarat. Upon completion of this store, scheduled for October 2013, the Joint Venture and the G Gay & Co businesses will overlap in relation to the retail supply of a range of hardware products to consumers in the Ballarat area. These products encompass a range of product categories, including:
- i. tools and hardware
 - ii. bathroom and kitchen materials
 - iii. plumbing supplies
 - iv. paint and decoration
 - v. garden supplies
 - vi. timber and building supplies
 - vii. lighting and electrical
 - viii. outdoor living
 - ix. flooring
 - x. storage and organisation
 - xi. window furnishing.
31. Hardware and home improvement products within these product categories are supplied through a number of retail distribution channels, including:
- a. multi-category hardware and home improvement retailers of various sizes ("hardware stores");
 - b. category specialists, which tend to cover a single or select range of product categories such as plumbing supplies, e.g. Reece and Tradelink; and
 - c. discount department/variety stores such as BigW and Kmart.
32. The ACCC's inquiries indicate that retailers in the Ballarat area seek to attract customers via their total product/service offering. This includes the range of products the retailer brings together in one place for the customer, the format and size of the store, as well as services it provides, such as specialist advice, delivery and convenient payment methods (e.g. trade accounts). Different retailers put varying degrees of emphasis on each of these factors. The ACCC considers that

⁸ If the Gay Stores were to continue their association with the 'Home Hardware' banner group, they would effectively obtain some of the wholesale supplies and promotional support/materials from their retail competitor.

⁹ This refers to the supply of a range of product categories which are within the hardware and home improvement definition set out at [31].

differences in the product, service and range offerings between stores and chains are factors which influence the closeness of competition between particular stores.

33. The ACCC's inquiries to date indicate that while specialty stores compete with multi-category stores to some extent, stores offering a similar range of products are closer competitors. Therefore, multi-category hardware and home improvement stores, which offer multiple product categories in one store, are likely to be closer competitors than specialty stores.
34. Although the ACCC considers that it is unlikely that each retailer selling products from a given category imposes an equally strong competitive constraint on all other retailers of those products, the ACCC considers there is potential for specialty retailers to impose some degree of competitive constraint on hardware retailers in the Ballarat area. The ACCC considers that department/variety stores are likely to be an even less proximate source of competitive constraint on multi-category hardware stores.
35. The ACCC's preliminary conclusion, therefore, is that Masters and the Gay Stores are likely to compete with retailers of varying formats, store sizes and product specialisations. However, of these, hardware stores of similar product range, promotional activity, store format and location are likely to be closer competitors.

Customer base

36. The ACCC has considered whether separate markets exist for retail sales of hardware and home improvement products to DIY and trade customers.
37. Industry participants draw a distinction between DIY and trade customers based on their different buying habits (for example, whether they use trade accounts) and preferences. However, there is a degree of overlap between the products they buy.
38. Market inquiries indicate that customers' preferences and expectations of hardware and home improvement retail stores vary and depend, in part, on the purpose of a customer's shopping trip. In general terms, DIY customers value the ability to shop from a range of products at competitive prices with a degree of personalised service. In comparison, trade customers are time-sensitive, valuing consistently prompt service, the ability to obtain a trade account or store credit, reliable supply and delivery of products to worksites if required. Hardware retailers may compete on the basis of these differences. For example, some stores focus on trade customers by offering trade account or store credit, dedicated speciality staff and prompt delivery of products. Other stores focus on DIY customers by offering, for example, ease of access and DIY workshops. However, market inquiries indicated that most retailers compete for both trade and DIY customers.
39. The ACCC's preliminary view is that these two categories of customers are not sufficiently differentiated to be in separate markets, but the differences between

them may mean that any competition effects of the Proposed Acquisition could affect them differently.

Geographic scope of competition

40. The ACCC considers that the geographic field of demand-side substitution is local, reflecting the distances that consumers are willing to travel to make purchases that are often regular and low-value relative to transport and other transaction costs. Market inquiries also indicate that retailers often lower their prices in response to the price of a competitor in a local area. The price-match guarantees advertised by Bunnings, Dahlsens and Masters are examples of this.
41. In previous competition analyses in the hardware industry, the ACCC has indicated that it considers each retail market on a case-by-case basis, closely examining competition within the 5km radius of the target and including participants up to 10km away where local circumstances meant this was appropriate. However, the nearest hardware store outside of the Ballarat area is at least 50 kilometres away. Therefore, the ACCC is considering the Proposed Acquisition in the context of the Ballarat area.
42. The ACCC considers the geographic market is the local retail market, but recognises that large chains and banner groups are subject to a degree of broader competitive constraint arising from their standardised retail offers and will consider the effect of this constraint when assessing the acquisition.

Conclusion on retail markets

43. The ACCC's preliminary view is that the Gay Stores and Masters are like to compete against a range of suppliers of hardware and home improvement products at the retail level to trade and DIY customers in the Ballarat area. However, the ACCC considers that among the various types of retailers, multi-category hardware stores are likely to be each others' closest competitors.

The ACCC invites comments from market participants on its preliminary view of the markets in which the Gay Stores compete. Market participants may wish to comment on:

- *The extent to which category specialists and other types of retailers impose a strong competitive constraint on the offers made by hardware stores both in the Ballarat area and on a broader geographic basis.*
- *The extent to which the Gay Stores provide a strong competitive offering to DIY customers, as distinct from their offerings to trade customers.*

Statement of issues

44. For the purposes of this Statement of Issues, the issues in this matter are categorised as 'issues of concern'.

Issues of concern

Reduced retail competition in the Ballarat area

45. The ACCC is concerned that the Proposed Acquisition will increase market concentration and will remove a close and effective competitive constraint on other hardware retailers in the Ballarat area in the foreseeable future.
46. Market inquiries indicate that the Gay Stores, located at Gillies Street, Ballarat and Howitt Street, Wendouree are close competitors of the Bunnings Warehouse store in Ballarat, to a greater extent than the other multi-category stores in the Ballarat area. The ACCC considers that the product offering, location, prices and service levels of the Gay Stores indicate that they would be likely to be one of the closest and most effective competitors to the Bunnings Warehouse store and the planned Masters store, to be located at Wendouree from 2013.
47. There are currently three major firms that retail hardware and home improvement products across a range of product categories in the Ballarat area:
 - a. the three Gay Stores;
 - b. Bunnings (one store);¹⁰ and
 - c. Dahlsens (one store).
48. In terms of store numbers, post-acquisition, the Joint Venture would own four out of six major multi-category hardware stores in the Ballarat area.
49. The Gay Stores, Bunnings and Dahlsens stores are similar in size, format, product offerings and promotional activities. However, based on these factors as well as the locations of their stores, market inquiries to date have indicated that the Gay Stores and Bunnings are currently the closest competitors of each other, and are likely to be the closest competitors of the Masters store when it commences operations in the Ballarat area in 2013.
50. The ACCC considers that when Masters commences operations in the Ballarat area, it will be a strong competitor, and that absent the proposed acquisition, Masters' entry would be pro-competitive as there would be four independent hardware retailers in the Ballarat area from 2013. The ACCC is concerned that if the acquisition proceeds, the primary competitors to the planned Masters store would be Bunnings and to a lesser extent, Dahlsens, a reduction from three to two.
51. As noted above, the group of small hardware stores have smaller product ranges, limited buying power and advertising levels relative to the larger hardware stores. In addition, specialty retailers in the Ballarat area have a relatively niche product focus. The ACCC's preliminary view is that these retailers would be unlikely to constrain an increase in prices, or a reduction in promotions or services offered to

¹⁰ There is also a Bunnings Trade Centre located in Mitchell Park. However, it does not retail a full range of hardware and home improvement products and therefore has not been included here.

consumers, by the larger hardware stores such as the Gay Stores, Bunnings and Masters.

52. As the ACCC's preliminary view is that it is unlikely that these smaller retailers of hardware and home improvement products in the Ballarat area are close competitors to the major hardware retail firms, the ACCC is concerned that the acquisition may have a substantial effect on competition in the retail of hardware and home improvement products in the Ballarat area.

The ACCC invites comments on the extent of the competitive constraint that is likely to occur in the absence of the proposed acquisition. For example:

- *Are the Gay Stores likely to remain vigorous and effective competitors in the absence of the proposed acquisition?*
- *Do you agree with the ACCC's preliminary view that specialty stores and other retailers are not likely to impose a strong competitive constraint on the merged entity?*
- *Which competitors, if any, are likely to competitively constrain the merged entity?*

Barriers to Entry

53. Market inquiries have indicated that entry of another hardware retailer, or expansion by a currently limited range incumbent, is unlikely given the presence of incumbents in the Ballarat area including the Masters store (from 2013), two Bunnings stores, a Dahlsens store and the three Gay Stores.
54. The ACCC also considers that the Gay Stores may also represent a means by which an alternative banner group or hardware chain could enter the Ballarat area as a competitor to other hardware chains. The proposed acquisition would remove this avenue for new entry, and therefore, increased competition compared to the counterfactual.

Preliminary conclusions

55. For the reasons outlined above, the ACCC considers that the proposed acquisition may raise competition concerns with respect to the retail supply of hardware and home improvement products to consumers in the Ballarat area.

The ACCC invites market participants to comment on its concerns in relation to the retail supply of hardware and home improvement products in the Ballarat area.

Market participants may wish to provide further information about the likely competitive constraints on the merged entity if the Proposed Acquisition were to proceed.

ACCC's future steps

56. The ACCC will finalise its view on this matter after it considers the market responses invited by this Statement of Issues.
57. 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.
58. Submissions are to be received by the ACCC no later than 1 June 2012. The ACCC will consider the submissions received from the market and the merger parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view in light of the issues raised above.
59. The ACCC intends to publicly announce its final view by 5 July 2012. 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.