



Statement of Issues

20 September 2012

Woolworths Limited - proposed acquisition of supermarket site at Glenmore Ridge Village Centre

Introduction

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (**ACCC**) on the proposed acquisition of a supermarket site at Glenmore Ridge Village Centre by Woolworths Limited (**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 (at www.accc.gov.au/processguidelines) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 4 October 2012 and anticipates making a final decision on 18 October 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. The ACCC invites comments from these parties by 4 October 2012.

Background

5. The ACCC commenced its informal review of the proposed acquisition on 20 June 2012.

The parties

The Acquirer: Woolworths Limited

6. Woolworths Limited (**Woolworths**) is an Australian and New Zealand retailer. Its operations include supermarkets, petrol, liquor, general merchandise stores, hardware and home improvement, and consumer electronics.
7. Woolworths is Australia's largest grocery retailer. It operates over 800 supermarkets across Australia.

The Target: supermarket site at Glenmore Ridge Village Centre

8. The Glenmore Ridge Village Centre (**Glenmore Ridge site**) is a 2.11ha block of undeveloped land located approximately 53km west of the Sydney CBD in the recently released Glenmore Ridge residential estate. The Glenmore Ridge estate is in the suburb of Glenmore Park, within the Penrith City municipality. The site is presently zoned as a 'Local Centre'. As a result, subject to council and regulatory approvals, the site can house a supermarket, as well as complementary specialty shops such as bottleshops, banks or post offices.
9. The Glenmore Ridge site is currently owned by Stockland Corporation Limited trading as Lensworth Glenmore Park Limited (**Stockland**). Stockland is a publicly listed diversified property group. It develops and manages a portfolio of residential community, retirement living, retail, office and industrial assets.

Other supermarket retailers

Coles

10. Coles is a leading food, liquor and convenience retailer. Coles is owned by Wesfarmers Limited, an Australian listed public company with diverse business operations in the retail, resources, insurance, chemicals, energy, fertilisers and industrial sectors.

Metcash Limited

11. Metcash Limited (**Metcash**) is Australia's largest independent grocery, fresh produce, liquor and hardware wholesaler and distributor. Metcash's IGA Distribution (IGA>D) business provides warehousing, distribution and marketing of grocery consumables to independent retailers operating under the IGA, Supa IGA and IGA Xpress supermarket brands.
12. Metcash recently completed the acquisition of Interfrank Group Holdings Pty Ltd from Pick n Pay Retailers (Pty) Ltd, as a result of which Metcash became the owner of the Franklins chain of supermarkets. Metcash has implemented a store sale program to sell the Franklins stores to new or existing IGA branded independent retailers. Metcash is operating the Franklins supermarkets whilst the store sale program is completed.

ALDI Australia

13. ALDI is a privately-owned global supermarket operator that entered Australia in 2001. It has over 250 stores across NSW, the ACT, Queensland and Victoria. Compared to other supermarket chains, ALDI has a greater focus on private label products and its stores are often smaller in size.

The transaction

14. Woolworths proposes to acquire the Glenmore Ridge site from Stockland.

Market inquiries

15. On 20 June 2012 the ACCC commenced market inquiries regarding the proposed acquisition. Submissions from interested parties closed on 6 July 2012. The ACCC has received information from a range of interested parties.
16. The ACCC is now calling for further information from interested parties to assist with its investigation as set out below.

With/without test

17. In assessing a proposed acquisition pursuant to section 50 of the *Competition and Consumer Act 2010 (Cth)* (**the Act**), the ACCC considers the effects of the acquisition by comparing the likely future competitive environment if the acquisition proceeds (the 'with' position) to the likely future competitive environment if the acquisition does not proceed (the likely 'without' or 'counterfactual' position) to determine whether the acquisition is likely to substantially lessen competition in any relevant market.
18. Most mergers reviewed by the ACCC involve the acquisition of a pre-existing business. In these circumstances the likely future state of competition without the merger will generally be similar to the state of competition prevailing at the time of the merger. In contrast, in this matter the proposed acquisition involves the acquisition of a site that is capable of being developed into a supermarket by Woolworths or another developer.
19. The 'with' position is that Woolworths' acquisition of the Glenmore Ridge site proceeds. Woolworths would then develop a large format full-line supermarket (subject to council approval) and potentially also a Woolworths branded bottleshop at the site. Complementary non-Woolworths specialty shops are also likely to be developed at the site.
20. If the proposed acquisition does not proceed, the options available to Stockland include:
 - a. selling the site to another developer or supermarket retailer for the purpose of developing a retail facility;
 - b. developing the site itself; or
 - c. holding the site in its current undeveloped state for a period of time, while it monitors the market and further considers its options. Such options may include applying to have the land rezoned to allow other uses such as residential development.
21. While acknowledging the potential breadth of options available to Stockland, the ACCC's preliminary view is that, in the absence of the proposed acquisition, the most likely outcome is that another supermarket would be developed at the Glenmore Ridge site.
22. In forming this preliminary opinion, the ACCC has had regard to relevant local planning documents, including:
 - a. the *Penrith Local Environmental Plan (Glenmore Park Stage 2) 2009* (**the LEP**);

- b. section 6.18 of the *Penrith Development Control Plan 2006*; and
 - c. the Glenmore Ridge Concept Plan submitted by Stockland to the Penrith City Council (and approved by the Council in February 2011) in respect of the Glenmore Ridge site.
23. The ACCC notes that under the LEP, the Glenmore Ridge site is zoned as 'B2 – Local Centre', and that the LEP, and the other documents referred to above, each recognise the importance of the Glenmore Ridge site being used to provide retail facilities for the local community. The ACCC understands that these documents do not mandate the construction of a supermarket at the Glenmore Ridge site. However, the ACCC understands that given the size of the Glenmore Ridge site (2.11ha), a supermarket anchor is likely to be a commercial necessity to ensure the ongoing viability of retail operations at the site.
24. Finally, the ACCC recognises that zoning, and other local planning documents relating to the Glenmore Ridge site, are capable of being amended. However, in the absence of any specific information that suggests that these planning restrictions would be amended if the proposed acquisition did not proceed, the ACCC considers that the current local planning documents for the Glenmore Ridge site are the best guide to how the site would be developed in the 'without' or 'counterfactual' position.
25. For these reasons, the ACCC's preliminary view is that in the absence of the proposed acquisition, there would be a non-Woolworths supermarket developed at the site.

The ACCC invites market participants to comment on the likely 'without' or 'counterfactual' position should the proposed acquisition not proceed.

Market definition

26. The ACCC's preliminary view is that the competitive effects of the proposed acquisition should be assessed in the context of the following markets:
- a. retail supermarket markets; and
 - b. wholesale procurement markets for products sold in supermarkets.

Retail markets

27. The ACCC considers that in retail markets involving chains and/or buying groups, competition may occur at both the national or state level and at the local geographic level. While all retailers compete to attract customers from other similar retailers located in the same local area, large chains/brands also compete through elements of their retail offers that are standardised across all stores within a broader area.

State-wide retail supermarket market

28. The relevant issue in defining the broader retail market is to identify the constraints on the aspects of Woolworths' retail offer that are standardised across multiple local markets.
29. The ACCC notes that major chains including Woolworths and Coles standardise key elements of their retail offer (such as state-wide prices and marketing campaigns) across all stores in NSW. The ACCC therefore considers that the

relevant geographic market in which to consider broader aspects of supermarket competition is state-wide.

Local retail supermarket market

30. When assessing local retail markets, the ACCC aims to identify the competitive constraints on the store level retail offers of the target store and other nearby stores operated by the acquiring firm. In the context of the present review, the 'target store' is the supermarket that would be developed at the Glenmore Ridge site.
31. The Glenmore Ridge site is located in the suburb of Glenmore Park. Glenmore Park is separated from the suburbs of Jamisontown and South Penrith to the north by the M4 Western Motorway (a major highway for which there are only two crossing points in Glenmore Park), and is bounded to the east, west and south by the predominantly rural suburbs of Orchard Hills, Regentville and Mulgoa respectively.
32. If the proposed acquisition proceeds, the following supermarkets would be located in Glenmore Park:
 - a. a Woolworths at the Glenmore Park Town Centre;
 - b. the proposed Woolworths at the Glenmore Ridge site; and
 - c. an ALDI that the ACCC understands is due to open at the Glenmore Park Town Centre in 2014.
33. The ACCC understands that these supermarkets would draw the majority of their customers from a catchment area south of the M4 (that is, from the suburb of Glenmore Park).
34. While market definition is a separate concept from the catchment area of local supermarkets, the catchment area is relevant in considering which other supermarkets may impose a competitive constraint on those local supermarkets.
35. The ACCC considers that the three supermarkets located in the suburb of Glenmore Park (and listed above at paragraph 32) would be the closest constraints on each other due to their geographic proximity (noting the differentiation of retail offerings between ALDI and Woolworths). However, another key issue for the purposes of defining the relevant local market is the extent of competitive constraint imposed on these supermarkets by supermarkets further afield.
36. Located approximately 1km north of the M4 (5-10 minutes drive from Glenmore Park, depending on traffic and starting location), the Woolworths supermarket at the Southlands Shopping Centre in the suburb of South Penrith is the next closest supermarket to Glenmore Park.
37. Further north, there are a number of supermarkets in the suburb of Penrith (10-15 minutes drive from Glenmore Park, depending on traffic and starting location). Penrith is the regional centre of the area, it contains:
 - a. a Woolworths in the Westfield Penrith complex (which is a major regional shopping centre);
 - b. a Coles in the Centro Nepean complex (which is a sub-regional shopping centre);
 - c. two Franklins supermarkets (one of which is in the Westfield Penrith complex);

- d. one ALDI; and
 - e. a Foodworks.
38. In a number of previous supermarket matters in urban areas the ACCC has used a 3-5km radius surrounding the supermarket to be acquired as a starting point for its consideration of the geographic scope of the local supermarket market. Penrith would be on the cusp of such a radius. However, in this review, as in all reviews of local markets that it undertakes, the ACCC considers a range of geographic and demographic factors that influence the precise scope of the relevant market.
39. The ACCC has formed a preliminary view that the relevant geographical market is Glenmore Park. In reaching this preliminary view the factors considered by the ACCC include the following:
- a. Penrith is approximately 10-15 minutes drive from Glenmore Park;
 - b. the impact of the M4 Motorway, which separates Glenmore Park from other suburbs to the north. The M4 Motorway is a major highway with limited points of crossing. The ACCC considers that the M4 constitutes both a physical and a perceived barrier to Glenmore Park residents when choosing where to conduct their supermarket shopping; and
 - c. other confidential information (including information and submissions provided by the merger parties) provided to the ACCC during the course of its review of the proposed acquisition, and during the course of the ACCC's 2008 review into Woolworths' acquisition of a supermarket lease at the Southlands Shopping Centre in South Penrith.
40. The ACCC recognises that non-Woolworths supermarkets in Penrith may provide some limited competitive constraint on supermarkets located in Glenmore Park, especially if residents of Glenmore Park travel regularly to Penrith as part of trips made for other purposes. However, the ACCC's preliminary view is that:
- a. the strongest competitive constraint on supermarkets located within Glenmore Park would come from other supermarkets located within Glenmore Park; and
 - b. the strength of the constraint provided by supermarkets in Penrith is insufficient for those supermarkets to be considered to be in the same local market as supermarkets located in Glenmore Park.

Wholesale procurement markets

41. Consistent with its consideration of previous supermarket acquisitions, the ACCC has also considered the proposed acquisition in the context of state-wide markets for the wholesale procurement of products sold in supermarkets.

The ACCC invites comments from market participants on its proposed definition of the relevant markets. In particular market participants may wish to comment on:

- i. the extent to which customers view supermarkets in Penrith and/or South Penrith as substitutes for supermarkets located in Glenmore Park;
- ii. what factors influence the distance that customers are willing to travel to do their grocery shopping;

- iii. whether the types of trip for which a customer would travel to Penrith include grocery shopping, and if so whether grocery shopping would be the primary reason for such a trip or would be incidental to a trip made to Penrith for another reason; and
- iv. whether the M4 acts as a physical or a perceived barrier to Glenmore Park residents when choosing where to conduct their supermarket shopping.

Statement of issues

42. For the purposes of this Statement of Issues, the issues in this matter are divided into two categories, 'issues of concern', and 'issues unlikely to pose concerns'.

Issues of concern

Local retail supermarket market

43. The ACCC's preliminary view is that the proposed acquisition is likely to result in a substantial lessening of competition in the local retail supermarket market. The ACCC considers that the proposed acquisition would be likely to have the effect of preventing or hindering competition that may otherwise have been brought to the local market by an alternative supermarket operator. This competition is unlikely to be otherwise introduced into the local market because of the lack of other available suitable sites for supermarket development.
44. The ACCC's preliminary view is based on the following propositions:
- a. if the proposed acquisition proceeds, the relevant local market will contain two Woolworths supermarkets (one at Glenmore Park Town Centre and the other at the Glenmore Ridge site), and an ALDI at the Glenmore Park Town Centre (from 2014);
 - b. in the absence of the proposed acquisition, there is likely to be a non-Woolworths supermarket developed at the Glenmore Ridge site. In this circumstance, the relevant local market would include three supermarkets operated by three different companies generating additional competitive rivalry in Glenmore Park and expanding consumer choice (compared to the 'with' position);
 - c. as discussed in greater detail below, the Glenmore Ridge site is the only site in the local market that has both the size and the zoning required to develop a supermarket. There is little prospect of a supermarket entering the local market in the foreseeable future other than by developing the Glenmore Ridge site.
45. The ACCC therefore considers that the proposed acquisition would prevent the entry of a competitor to Woolworths in the local Glenmore Park market, leading to a substantial lessening of competition. This is likely to affect local consumers in a number of ways, including the following:
- a. a reduction in the variety of retail offerings available to customers in the local market. A non-Woolworths supermarket at the Glenmore Ridge site would introduce a third unique retail offering for customers in the local market. In contrast, the development of a Woolworths supermarket at the Glenmore Ridge site would duplicate a retail offering already available in the local market; and

- b. a reduction in the quality of retail offering provided by the existing Woolworths supermarket at Glenmore Park Town Centre. The ACCC considers that the introduction of a non-Woolworths supermarket at the Glenmore Ridge site would introduce competition to which the Woolworths at Glenmore Park Town Centre would be forced to respond. For example, Woolworths' response may include increased service, staffing levels or improvements in other non-price aspects of its retail offering. The additional competition may also compel Woolworths to engage in localised price-based competition. In contrast, the development of a Woolworths supermarket at the Glenmore Ridge site would not provoke a competitive response from the Woolworths at the Glenmore Park Town Centre. Customers would therefore be negatively affected by the proposed acquisition because it would remove the competitive incentive for Woolworths to increase the quality of its local retail offering.
- 46. As the ACCC has noted in previous reviews, barriers to entry to supermarket retailing are generally high. There are considerable lead times and sunk costs involved in establishing a new supermarket, which can pose a particular barrier when the market is already served by multiple existing supermarkets (particularly if they include a scaled incumbent). Lack of access to suitable sites can also be a significant barrier to new entry.
 - 47. The ACCC's preliminary view is that lack of access to suitable sites is a particular issue in this local market. This is because the Glenmore Ridge site is the only site in the local market (or in the suburbs surrounding the local market) that has both the size and the zoning necessary to develop a supermarket. Further, the ACCC understands that there are no plans for further development of the areas surrounding Glenmore Park or the Glenmore Ridge site in the foreseeable future.
 - 48. Woolworths has submitted to the ACCC that alternative sites capable of supporting a new supermarket entrant are available at Wallacia and Nepean Green.
 - 49. Wallacia is a small town/village over 7kms to the south of the Glenmore Ridge site in a straight line (approximately 15-20 minutes drive). Wallacia is not on any major transit routes and there is minimal urban development between Wallacia and Glenmore Park.
 - 50. Nepean Green is a redevelopment project of a former industrial site in Penrith. The site is adjacent to (but on a distinct block of land from) the Centro Nepean sub-regional shopping complex in which there is currently a Coles supermarket.
 - 51. The ACCC currently considers that even if these sites have zoning suitable for development of a supermarket, both of these sites would be outside of the relevant market and supermarkets at these sites would be unlikely to provide any meaningful additional constraint on supermarkets located in Glenmore Park.

The ACCC invites comments from market participants on the likely effect of the proposed acquisition of the Glenmore Ridge site on local supermarket competition.

In particular market participants may wish to comment on:

- i. the extent to which a non-Woolworths supermarket at the Glenmore Ridge site would contribute a differentiated retail offering to the local market, in comparison to an additional Woolworths supermarket being developed at the site;

- ii. the extent of the competitive response that a non-Woolworths supermarket at the Glenmore Ridge site is likely to induce in the existing Woolworths supermarket at Glenmore Park Town Centre; and
- iii. any alternative sites available in the local area that are suitable for the development of a supermarket, and the extent of competitive constraint that a new supermarket at those sites would be able to impose on supermarkets located within Glenmore Park.

Issues unlikely to pose concerns

State-wide retail supermarket market

52. The ACCC considers that the proposed acquisition would be unlikely to pose concerns in the state-wide retail supermarket market as the development of a single new supermarket would result in only a very small increase in state-wide market share for Woolworths. Further, it would not result in a reduction in the number of operators and retail chains competing with Woolworths on a state-wide level. It would therefore not be likely to affect the efficacy of competition in the state-wide market.

Wholesale procurement markets for products sold in supermarkets

53. The ACCC considers that the proposed acquisition would result in only a minimal increment to Woolworths' purchasing volumes. As such it is unlikely to have a significant impact on competition in procurement markets.

ACCC's future steps

54. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
55. 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.
56. Submissions are to be received by the ACCC no later than 4 October 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.
57. The ACCC intends to publicly announce its final view by 18 October 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.