



## ***Public Competition Assessment***

*21 April 2010*

### ***Link Market Services Limited – proposed acquisition of Newreg Pty Ltd***

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#### **Introduction**

1. On 24 March 2010, the Australian Competition and Consumer Commission (ACCC) announced its decision to oppose the proposed acquisition of Newreg Pty Limited (**Newreg**) by Link Market Services Limited (**Link**) (**proposed acquisition**). The ACCC was of the view that the acquisition by Link of Newreg's wholly owned subsidiary Registries Limited (**Registries**) would be likely to have the effect of substantially lessening competition in the national market for the provision of securities registration and related services to publicly listed companies and entities with similar requirements in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).
2. The ACCC formed its view on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.

#### **Public Competition Assessment**

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
  - a merger is opposed;
  - a merger is subject to enforceable undertakings;
  - the merger parties seek such disclosure; or
  - a merger is not opposed but raises important issues that the ACCC considers should be made public.
4. This Public Competition Assessment has been issued because the proposed acquisition was opposed by the ACCC.
5. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the public to

circumstances where developments in particular markets have led, or are likely to lead, to changes in the ACCC's assessment of competition conditions in those markets.

6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
7. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

## **The parties**

### **The acquirer – Link Market Services**

8. Link is a member of the Link Group, a private company based in Australia which provides superannuation administration and assists companies with investor relations, employee share plans and company secretarial services. Link Group is owned indirectly by a private equity investment fund managed by Pacific Equity Partners Limited and Intermediate Capital Group.
9. Link provides companies and trusts with a range of registry services such as:
  - registry management (including payment of dividends, annual general meeting services, reporting and shareholder enquiry management);
  - capital raisings and other corporate actions (such as buy-backs, share sale facilities, rights issues, share purchase plans, demergers, demutualisations and takeover offers);
  - employee share and option plan services; and
  - specialist services (such as unlisted unit registry management and quantitative analysis).
10. Link operates in Australia, New Zealand, South Africa, India and Papua New Guinea.

### **The target – Newreg Pty Ltd**

11. Newreg is a company owned by four separate shareholders: ADBO Group Pty Limited (33.33%), Boardroom Limited (33.33%), Austock Limited (16.67%) and Solanum Pte Ltd (16.67%).

12. Newreg was incorporated in April 2007 for the sole purpose of acquiring a 100% interest in Registries. Registries is a share registry provider which competes with Link.
13. Registries provides companies and trusts with a range of registry services such as:
  - share register analytics;
  - proxy solicitation services (scheme meetings, mergers and acquisitions, capital raisings);
  - management of employee option and share plans;
  - managing investor relations, communications and intelligence; and
  - online solutions to meet the shareholder voting and reporting requirements of its customers under the *Corporations Act 2001*.
14. Registries's customers include over 260 companies listed on the Australian Securities Exchange (**ASX**) and National Stock Exchange (**NSX**), including Metcash, Aristocrat Leisure, Seven Network, Harvey Norman and Ramsay Health Care.

## Other industry participants

### Computershare

15. Computershare Limited (**Computershare**) was originally founded in Melbourne in 1978. In 1994, Computershare was listed on the ASX as a small technology company. In its early stages, Computershare developed a securities registration system, known as SCRIP, which was used by three of the four major accounting firms in Australia – KPMG, Ernst & Young, and PricewaterhouseCoopers.
16. Computershare has grown through several acquisitions to become the world's largest global player in the provision of securities registry services. The company vertically integrated in late 1997 by acquiring the KPMG and Ernst & Young registry businesses (i.e. Computershare went from providing the underlying information technology (**IT**) system to the accounting firms, to providing registry services itself) and also acquired BT Registries in 2001.
17. Computershare provides customers with a range of different services, including:
  - registry and stakeholder servicing (such as registry management and stakeholder relationship management);
  - corporate actions;
  - meeting services;
  - employee plan solutions;
  - fund services; and
  - communication services.

## Security Transfer

18. Security Transfer Registrars Pty Limited (**Security Transfer**) is a Perth-based company established in 1983. It delivers professional share registry services to listed and unlisted entities in Australia and, to a lesser extent, overseas. It maintains security registers for publicly listed and unlisted companies, and provides services including transferring ownership of securities, issuing holder statements, allotting securities, and handling shareholder enquiry services.

## Advanced Share

19. Advanced Share Registry Limited (**Advanced Share**) is a Perth-based business established in 1996. It provides registry services to listed and unlisted customers, including maintaining registers, transferring ownership of securities, issuing holder statements, allotting securities, and handling shareholder enquiry services.

## Industry background

20. The users of registry services in Australia are publicly listed companies and entities with similar requirements. All publicly listed companies in Australia are required to maintain share and other registries under their constitutions, the *Corporations Act 2001*, the listing rules of the ASX and the securities clearing house rules of the Australian Securities and Transfer Corporation Limited. The same or similar requirements apply to other listed entities (for example, listed trusts) and unlisted entities with obligations under the *Corporations Act 2001*. The reliable and cost-effective provision of registry services makes an important contribution to the efficient operation of securities markets, while also benefiting shareholders and other owners of securities.
21. In Australia securities registration has transformed since the late 1990s. Initially, the major participants were principally accounting firms – KPMG, PricewaterhouseCoopers, Ernst & Young and Deloitte/Greenwood Challoner. In addition many large listed entities chose to run their own in-house registries.
22. Since that time, the number of participants involved in securities registry services has declined in all countries. This trend to aggregation has been caused by the increasing sophistication and cost of information systems which are the basis for much of the competition among registry service providers. Substantial IT systems and resources are required to support and manage complex large-scale transactions such as calculation and/or payment of dividends. This is an important element of competition between registry service providers.
23. In the late 1990s Computershare acquired the registry businesses of the major accounting firms, where it previously had a part in the development of the IT systems used for registry services. Pacific Equity Partners similarly acquired ASX Perpetual, thereafter being known as Link Market Services.

## ACCC review timeline

24. The following table outlines the timeline of key events in this matter.

<b>Date</b>	<b>Event</b>
22 December 2009	ACCC commenced review under the Merger Review Process Guidelines.
13 January 2010	Closing date for submissions from interested parties.
27 January 2010	Former proposed date for announcement of ACCC's findings. Decision delayed to allow the ACCC to conduct further inquiries.
2 February 2010	ACCC published a Statement of Issues outlining preliminary competition concerns.
16 February 2010	ACCC requested information from the merger parties. ACCC timeline suspended.
18 February 2010	ACCC requested further information from the merger parties.
19 February 2010	Closing date for submissions relating to Statement of Issues.
24 February 2010	ACCC received further information from the merger parties in response to the ACCC's request of 16 February 2010. ACCC timeline remains suspended, pending receipt of the merger parties' response to the ACCC's information request of 18 February 2010.
26 February 2010	ACCC received further information from the merger parties, in response to the ACCC's request of 18 February 2010. ACCC timeline recommenced.
10 March 2010	Former proposed date for announcement of ACCC's findings of 12 March 2010, amended to allow the ACCC to conduct further inquiries.
24 March 2010	ACCC announced it would oppose the proposed acquisition.

## Market inquiries

25. The ACCC conducted extensive market inquiries in relation to the proposed acquisition with listed and unlisted companies, domestic and overseas registry service providers, government bodies and other interested parties.

## Statement of Issues

26. On 2 February 2010, the ACCC published a Statement of Issues regarding the proposed acquisition. The Statement of Issues identified two issues arising with respect to the proposed acquisition categorised as issues of concern.
27. The ACCC's preliminary view was that the proposed acquisition would be likely to have the effect of substantially lessening competition in the market for the provision of securities registration and related services to publicly listed companies and entities with similar registration requirements by increasing the ability and incentive for Link and Computershare to coordinate their conduct.
28. Further, the ACCC took the preliminary view that the proposed acquisition would also be likely to enhance the merged firm's ability to unilaterally exercise market

power in the provision of securities registration and related services, particularly to ‘large cap’ (ASX 100) customers. The ACCC was concerned that the proposed acquisition would remove the only other provider of securities registration and related services able to service most, if not all, segments of the market.

29. The Statement of Issues is available on the ACCC’s website at [www.accc.gov.au/statementsofissues](http://www.accc.gov.au/statementsofissues).

## **Areas of overlap and market definition**

30. Link and Registries each provide securities registration and related services to a range of different entities located across Australia. After taking into account information provided by the merger parties and information arising from its market inquiries, the ACCC considered the proposed acquisition in the context of a national market for the provision of securities registration and related services to publicly listed companies and entities with similar registration requirements. The ACCC noted the possibility of alternative market definitions and various methods of segmenting the market, but considered that the proposed acquisition would be likely to have the effect of substantially lessening competition irrespective of how the market was defined or segmented.

## **Product dimension**

31. Securities for which registration and related services may be required include:
- listed equity securities;
  - listed debt securities;
  - listed hybrid securities;
  - unlisted equity securities;
  - unlisted debt securities;
  - managed funds; and
  - warrants.
32. Related services include but are not limited to maintenance of shareholder records, payment of dividends, processing corporate actions, running annual general meetings and administering employee share plans. While some of these services appear to be complementary rather than substitutable, Link and Registries both offer a similar suite of services and accordingly the ACCC considered the services as one bundle rather than discrete services for the purpose of defining the relevant product dimension.
33. Different entities have different registry requirements. Most (though not all) large listed companies (ASX100 or ‘large cap’ clients) have complex registers. For example, a listed company with 100,000 shareholders may require dividend reinvestment plans, employee share plans, extensive shareholder communications, direct voting services and other services for complex corporate actions. In contrast, many small listed companies and unlisted entities have

simple registers. For example an unlisted company with 50 shareholders may only need limited shareholder record-keeping and communication services.

34. The customers served by Link and Registries include small, medium and large publicly listed companies and other listed and unlisted entities with similar registration requirements in terms of dividend payments, shareholder meetings and other forms of shareholder communication. Among these customers, there is a spectrum of registry requirements based on the number and concentration of shareholders and factors such as the level of corporate activity (including dividend payments, shareholder meetings and other forms of communication), the existence of employee share plans and reporting requirements. However, the ACCC found no clear break between simple and complex registry requirements or between large and small registers.
35. On the demand side, the ACCC found that customers with large and complex shareholder registers would not switch to a provider that only supplies customers with small, simple shareholder registers, since such providers generally lack the reputation and infrastructure (particularly the IT systems) required to service large companies. Customers with small, simple shareholder registers, however, would be able to switch to any provider of registry services. Accordingly, the ACCC found that demand-side substitution was asymmetric in nature.
36. Supply-side substitution was also found to be asymmetric in nature. Suppliers that are able to service customers with large and complex registers can also service customers with simple registers without additional investment, but registry service providers currently servicing customers with simple registers would face significant barriers in scaling up to serve customers with complex registers. These barriers include:
  - substantial sunk infrastructure costs, particularly with respect to IT systems;
  - reputation barriers with customers, particularly associated with reliability and ability to enable customers to satisfy their regulatory requirements; and
  - limited customer switching (or ‘customer stickiness’) due to the perceived risks of regulatory breaches and shareholder complaints.
37. There is no clear distinction between simple and complex registry requirements or between large and small registers. Accordingly, there appeared to be no clear basis upon which to define either multiple markets with narrower product dimensions or one market spanning both simple and complex registry requirements consisting of distinct separate product segments. Furthermore, the ACCC noted that the target, Registries, was particularly active in servicing customers in the middle of the spectrum and, in contrast with smaller registry service providers, has increasingly been scaling up to serve and attract customers with larger and comparatively more complex registers. Therefore, taking a purposive approach, the ACCC considered one broad product dimension to be the most appropriate framework for its consideration of the proposed acquisition.

## **Geographic dimension**

38. Link and Registries each supply customers located across Australia. While the ACCC's market inquiries indicated that the location of a registry service provider may affect its ability to compete due to a perceived customer preference for registry service providers with offices in the same city, there are no technical or regulatory impediments to providers in one location servicing customers based in another. Since at least the 1980s the relevant laws and rules in relation to the maintenance of share and other registers by publicly listed companies have been uniform or substantially uniform throughout Australia. Moreover, clients of registry service providers are generally ASX listed entities and the ASX is a national entity. The ACCC therefore considered the relevant geographic dimension to be national. However, it is worth noting that the constraints imposed by the two smaller and more geographically focussed providers (i.e. Security Transfer and Advanced Share) are particularly limited outside Western Australia, and this is recognised as part of the competition analysis below.

## **Conclusion**

39. The ACCC considered the proposed acquisition in the context of the national market for the provision of securities registration services to publicly listed companies and entities with similar registration requirements. If there had been clear breaks between the registration requirements of small, medium and large customers within this market, the ACCC may have defined different segments based on each group or possibly separate markets in relation to different types of customers. In the absence of such breaks, the ACCC instead considered the effect of the proposed acquisition on a range of customers with different registers – from simple through to complex, small through to large. Importantly, the outcome of the competition analysis would not have differed if the ACCC had defined separate markets, or different segments in the broader market, based on customer requirements.

## **Competition analysis**

### **Market concentration**

40. The ACCC found that the proposed acquisition would increase concentration by a small but significant amount in the national market for the provision of securities registration services to publicly listed companies and entities with similar registration requirements.
41. Computershare and Link are the largest registry services providers and together account for a very substantial share of the national market for the provision of securities registration services to publicly listed companies and entities with similar registration requirements. Computershare and Link are also able to service all companies and entities requiring registry services. While Registries is smaller than Link and Computershare and predominantly caters to small and medium companies, the ACCC found that Registries has been pursuing an aggressive expansion programme and targeting large customers, such that its



present comparatively small market share is likely to significantly understate its present and future competitive impact in the market.

42. The ACCC therefore considered that the proposed acquisition would entrench the duopoly of Link and Computershare in the supply of registry services to medium and large customers with complex registers and remove a significant alternative for customers with simple registers. Post-acquisition, small clients would have only Computershare, Advanced Share and Security Transfer as alternative registry services providers, while for medium companies the number of viable alternatives to Link would reduce from two to one. The proposed acquisition would also remove a promising source of future competition to Computershare and Link in the supply of the largest customers with the most complex register requirements.

### **Availability of substitutes**

43. Post-acquisition the alternative providers of securities registration services to publicly listed companies and entities with similar registration requirements would be:
- Computershare alone for customers with complex registers; and
  - Computershare, Advanced Share and Security Transfer for customers with simple registers or small numbers of shareholders, with a few niche and largely unknown alternatives available to very small customers.
44. Security Transfer and Advance Share are significantly smaller than Registries and focus on small resources companies based in Western Australia. The ACCC considered that Security Transfer and Advance Share would face significant barriers in scaling up to serve medium and large customers with complex registers in competition with the merged firm, including sunk infrastructure upgrade costs, reputation limitations, customer stickiness and economies of scale. Accordingly, the ACCC considered it unlikely that Security Transfer and Advance Share would provide an effective competitive constraint on the merged firm in the foreseeable future for medium and large clients or clients with complex share registers.
45. In relation to the competitive constraint on the merged firm provided by Computershare, the ACCC was concerned that there would be a real chance of muted competition between Link and Computershare post-acquisition as discussed below in the context of coordinated effects.

### **Barriers to entry and expansion**

46. The ACCC considered that the threat of new entry, including potential entry by overseas registry service providers, was unlikely to provide an effective competitive constraint on incumbent registry service providers in the Australian market. The ACCC found that barriers to entry and expansion are relatively high and consist of:
- substantial sunk infrastructure costs, particularly with respect to IT systems;

- reputation barriers with customers, particularly associated with reliability and ability to enable customers to satisfy their regulatory requirements;
- limited customer switching (or ‘customer stickiness’) due to the perceived risks of regulatory breaches and shareholder complaints; and
- economies of scale.

*Sunk infrastructure costs*

47. Market inquiries indicated that appropriate and effective IT systems are critical to a registry service provider’s ability to attract customers, particularly larger customers with more complex registers. Sunk costs in designing, developing, testing and implementing a suitable IT system are in the order of tens of millions of dollars. Extensive and ongoing investment in the order of millions of dollars is required to achieve efficiencies and maintain service levels. Given the high volume of transactions and respective risk, registry service providers need appropriate IT systems to ensure total accuracy and audit capacity. By improving their IT systems, registry service providers are also able to attract larger clients and acquire scale in order to remain competitive. A new entrant that does not invest a substantial amount in IT systems may be able to service the smallest clients with very simple registers, but is unlikely to be an effective competitor in supplying the majority of customers.

*Reputation barriers and regulatory requirements*

48. While there is no formal licensing of share registries in Australia and the only regulatory requirement for a new entrant is the need to obtain technical accreditation from the ASX Settlement and Transfer Corporation in order to access CHESS, customers rely on their registry service provider to assist them in complying with various listing and settlement rules. The cost incurred by clients in the event that a registry service provider fails to provide accurate high quality registry services, including potential penalties for breaching ASX rules, can be significant.
49. As a consequence, new entrants need to demonstrate familiarity with ASX listing and settlement rules and customers need to have confidence that a provider’s IT systems are tailored to facilitate compliance. Building trust among prospective customers would therefore involve long lead times and substantial investment and constitute a significant barrier to entry.

*Customer stickiness*

50. Customer switching is limited in the national market for the provision of securities registration services to publicly listed companies and entities with similar registration requirements. Despite the fact that registry service providers, particularly Computershare, Link and Registries, actively contact potential customers to induce switching, customers generally only change providers as a result of dissatisfaction with their current service provider or when their registries requirements change. Even customers that call for tenders for long term contracts typically remain with their incumbent provider. Market inquiries indicated that

the relatively small cost of registry services compared with the potential harm to the customer if a new provider failed to deliver effective registry services meant customers were generally reluctant to change providers. Registry service providers also impose costs for switching based on the client's number of shareholders which may restrict some companies from switching. As a consequence of such customer stickiness and switching costs, new entrants and existing providers face great difficulty in growing their customer base. Only vigorous competitors such as Registries appear to have had any success in inducing significant customer switching.

#### *Economies of scale*

51. The provision of registry services is a high fixed cost business, where competing effectively requires scale to minimise unit (or average) costs. A small registry services provider that has manual systems focussed on servicing small clients with simple registers would be limited in its ability to compete effectively with larger incumbent suppliers due to the higher marginal costs it faces in taking on significant additional clients. Accordingly, in order to compete effectively with the merged firm and Computershare, a new entrant would need to enter on a significant scale. Given customer stickiness described above, entry on a large scale is unlikely.

#### **Removal of a vigorous and effective competitor**

52. The ACCC found that Registries is a vigorous and effective competitor in the national market for the provision of securities registration services to publicly listed companies and entities with similar registration requirements. Over the past three years, Registries has repeatedly engaged in aggressive marketing campaigns to increase customer familiarity with and trust in its brand, to encourage customers to use tender processes and to grow its customer base through customer switching. Registries has offered customers significant discounts and has successfully attracted small and medium customers away from Link and Computershare. Registries also has one of the best retention rates of all registry service providers, indicating that Registries is effective in servicing those customers that do choose to switch.
53. There is evidence that the presence of Registries in the market and its maverick behaviour in pricing, marketing, business strategies and tender proposals provide significant benefits to a broad range of customers – in particular, to customers with medium-sized registers for which smaller providers are not an option. For example, participation by Registries in formal and informal tender processes has provided medium-sized companies and large companies with simpler shareholder registers with an important third option, which a number of companies have used as leverage to obtain better prices and services from Link or Computershare. The success of Registries in winning progressively larger customers suggests that it is better able to overcome barriers to expansion than its smaller rivals and, in the foreseeable future, the ACCC considered that there was a real chance Registries would be able to service some of the largest customers with complex requirements.

54. The ACCC therefore concluded that the proposed acquisition would lead to the removal of a vigorous and effective competitor in the national market for securities registration and related services to listed companies and entities with similar requirements, and would thereby enable Link and Computershare to achieve higher prices from a broad range of customers with reduced pressure to improve services.

### **Coordinated effects**

55. The ACCC formed the view that, without the disruptive and aggressive competition provided by Registries, there would be a real chance of muted competition developing between the Link and Computershare post-acquisition – that is, the ACCC found that the proposed acquisition would be likely to give rise to coordinated effects.
56. In particular, the ACCC was of the view that the removal of Registries as a competitor would have been likely to increase the ability and incentive of Computershare and Link to engage in coordinated conduct in the form of tacit customer allocation or market sharing. Information facilitating such tacit behaviour is easily accessible. For instance, Computershare and Link would be able to discover customer switching simply by accessing the ASX website, which provides details of each listed company's registry.
57. The presence of Registries, which plays a destabilising maverick role in the market and provides an important third option for a broad range of customers, is likely to significantly reduce the prospect of coordinated conduct in the form of customer allocation or tacit market sharing. Mavericks can spell the difference between effective and ineffective coordination and will often wield price influence disproportionate to their market share. Coordination is much easier to sustain with two players rather than three, particularly when the third is a small but growing and aggressive rival. The ACCC found that as a smaller competitor Registries had a lot more to gain and less to lose from aggressive competition. Link and Computershare would risk losing critical volume contracts if they did not respond in kind.
58. Furthermore, any consensus reached between Computershare and the merged firm through repeated interaction in the absence of a maverick rival is highly unlikely to be undermined by external competitive constraints in the market. With no actual or potential alternative for medium and large customers, given the high barriers to entry and expansion, the ACCC was concerned that tacit collusion among registry service providers could result in significant price rises above competitive levels.
59. Under such circumstances, the ACCC took the view that it was likely that the merged firm and Computershare would realise that their individual profits would be greater over the longer term if they refrain from competition than if they compete aggressively. The customised nature of the product and, in particular, the stickiness of customers (due to the perceived risks of switching) tend to reduce the incentive for established providers to compete aggressively to gain market share. If one provider did cut price or compete aggressively, their rival may be

likely to find this out from the customer and react by winning one or more customers back. The merged firm and Computershare might quickly learn that there is little to be gained from such aggressive competition, limiting their rivalry to winning new customers or picking up the disgruntled customers of their rival without any need for aggressive price competition.

60. The ACCC therefore concluded that the proposed acquisition would give rise to a real chance of muted competition or tacit market sharing post-acquisition, given the low levels of customer switching and significant barriers to entry. Without Registries in the market, the ACCC considered it likely that Link and Computershare would be able to achieve higher prices and would face reduced pressure to improve services.

## **Conclusion**

61. The ACCC concluded that the proposed acquisition would remove one of a very small number of providers of registry services and an important competitive discipline on Link and Computershare. As a consequence, the proposed acquisition was likely to lead to higher prices and reduced quality of registry services, to the detriment of shareholders in a broad range of listed and unlisted companies. Accordingly, the ACCC formed that view that the proposed acquisition was likely to substantially lessen competition in the national market for the provision of securities registration and related services to publicly listed companies and entities with similar registration requirements, in contravention of section 50 of the Act.