



*Public Competition Assessment
13 June 2006*

ABC Learning Centres Limited's proposed acquisition of Kids Campus Limited

Introduction

1. On 10 May 2006, the Australian Competition and Consumer Commission (ACCC) announced that it would not oppose the acquisition of Kids Campus Limited (Kids Campus) by ABC Learning Centres Limited (ABC) after ABC provided a court-enforceable undertaking to the ACCC to divest five child care centres in regional areas.
2. The ACCC made its decision on the basis of information provided by the 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 transaction, subject to confidentiality requirements.

Public Competition Assessments

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 rejected;
 - a merger is subject to enforceable undertakings;
 - the merger parties seek such disclosure; or
 - a merger is approved but raises important issues that the ACCC considers should be made public.
4. In this case, the merger is subject to enforceable undertakings.
5. By issuing Public Competition Assessments, the ACCC aims to provide the market with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the market to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change, because of developments.
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.

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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 identify the sources of such information. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, maintaining confidentiality will be the ACCC's paramount concern.

The Parties

ABC Learning Centres Limited (the acquirer)

8. ABC is listed on the Australian Stock Exchange and it is the largest listed global provider of child care services. Prior to the acquisition, ABC owned over 755 child care centres in Australia.

Kids Campus Limited (the target)

9. Kids Campus is also listed on the Australian Stock Exchange. Prior to the acquisition it owned and managed around 90 child care centres and development sites in Queensland, New South Wales, Western Australia and Victoria.

Proposed transaction

10. On 15 March 2006, ABC publicly announced that it proposed to acquire Kids Campus. That same day, the ACCC commenced an assessment of the proposed acquisition under its Merger Review Process Guidelines.

Timing

15 March 2006	ABC publicly announced its proposal to acquire Kids Campus. ACCC commenced market inquiries.
5 April 2006	Closing date for submissions.
4 May 2006	ACCC invited public comments on a draft undertaking offered by ABC.
10 May 2006	ACCC accepted a court-enforceable undertaking by ABC and announced that it would not oppose the acquisition.

Market inquiries

11. The ACCC received submissions from competitors, industry associations, government agencies and other interested parties.

Market definition

Product market

12. There are about 4852 long day care (LDC) centres in Australia. These centres are located throughout Australia, in both major urban cities and regional towns.
13. Market inquiries confirmed that family day care (FDC), pre-schools and kindergartens, after school hours care and occasional care are not close substitutes for centre-based LDC services. This response is consistent with that obtained from market inquiries in the ACCC's assessment of ABC's acquisition of Peppercorn Management Group Limited and Child Care Centres of Australia in 2004 (Peppercorn acquisition).
14. In particular, market inquiries in the present matter indicated that there were clear qualitative differences between LDC and FDC services, pre-schools and kindergartens, after school hours care and occasional care.
15. The main qualitative differences between LDC and other services raised during market inquiries were as follows:
 - whereas LDC centres are required to recruit qualified staff (that is, staff with specific formal child care qualifications), FDC schemes are not, although FDC staff are required to undergo induction programmes and satisfy medical and police checks among other things. Also, LDC centres operate relatively bigger centres with more places than that provided by FDC schemes (which operate from carers' homes). In addition, FDC schemes provide a home-like environment for children in the sense that children are involved in household routines (for example, shopping).
 - pre-schools and kindergartens only provide services during school terms for a limited number of hours per week spread over a number of sessions;
 - after school care does not cater for children below school age; and
 - occasional care does not offer parents the certainty and routine that LDC centres provide.
16. Market inquiries indicated that parents were unlikely to switch to one of these alternative services, in response to a small but significant price increase, for LDC services. Consequently, the ACCC concluded that the relevant product market was the supply of centre-based LDC services.

Geographic market

17. Market inquiries confirmed that generally parents prefer LDC services which are located either close to home, close to work or somewhere convenient in-between.
18. Consequently, a price increase by a centre located near where parents live would be likely to be constrained by other centres also located near where parents live, as well as centres located near where parents work or somewhere convenient in-between.

19. This suggests that LDC markets are relatively local in nature. However, it is difficult to precisely define geographic markets in metropolitan areas as parents living in one part of a city may work in that area or in a variety of locations in the city.
20. Even in regional areas, where geographic markets are generally likely to comprise individual towns and their immediate surrounds, difficulties regarding the definition of precise geographic markets might arise where other towns (or a city) are located nearby.
21. Given the difficulties with defining the geographic dimension of LDC markets, the ACCC initially relied on geographic markets comprising an area within approximately 10 kilometres of the LDC centres being acquired by ABC (in specific cases, the market might be narrower or wider because of, among other factors, local geography and road and rail systems).
22. Where competition concerns did not arise in this narrowly-defined market, the ACCC considered it unlikely that they would arise if a broader geographic market was adopted.

Competition assessment

23. Initially, the ACCC examined the change in market concentration (and particularly ABC's post-merger share by number of places) in each local LDC market (as defined in paragraph 21) post-merger.
24. In a substantial number of local markets, market concentration did not change at all, or did not change significantly. No competition concerns arose in these markets.
25. In other markets, ABC's market share rose reasonably significantly post-merger. However, the ACCC concluded that in some of these markets, the proposed merger would not be likely to substantially lessen competition. In reaching this decision, the following considerations were relevant:
 - whether post-merger, there would exist a significant number of competitive centres with vacant places;
 - whether centres owned by competitors had recently entered the relevant markets;
 - whether many of the local markets had a significant and growing number of below-school-age children. Growing markets are more likely to attract new entry, meaning current market shares may not be sustained;
 - the existence of a significant number of development sites owned by competitors - this strengthened the potential for new entry in the near future; and
 - the likelihood that, particularly in metropolitan areas, a proportion of parents would consider childcare centres outside the local market to be substitutes.
26. However in certain regional markets, after taking into account the considerations outlined above, the ACCC concluded that the proposed acquisition would still have been likely to substantially lessen competition. In particular, in these markets:
 - ABC would have had substantial market share post-merger; and

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- the available evidence did not indicate that new entry was likely in the foreseeable future. Market inquiries in some of the relevant areas also raised concerns about the ability of new entrants to obtain sufficient qualified staff to meet customer demand and regulatory requirements.

Section 87B undertaking

27. On 10 May 2006 the ACCC accepted a court-enforceable undertaking offered by ABC under section 87B of the *Trade Practices Act 1974*. This undertaking requires ABC to divest 5 LDC centres in regional markets where the ACCC considers that post-acquisition, a substantial lessening of competition is likely to occur. The ACCC is satisfied that these divestitures will address its competition concerns.
28. The non-confidential version of the undertaking is at **Attachment A**. The identity of the centres to be divested and the timeframe for the divestitures are confidential.

Attachment A

