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ORGANISATIONAL STRUCTURAL CHANGE – CONSOLIDATION IN THE FINANCIAL SERVICES INDUSTRY

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1. INTRODUCTION

I am pleased to have the opportunity to talk to you today about competition issues in the Australian financial services sector and in particular to discuss the Australian Competition and Consumer Commission’s (the Commission’s) policy framework for consideration of mergers and acquisitions in the sector.

As you are all probably aware, the Commission’s position is, and always has been, that mergers - and especially bank mergers - are handled on a case-by-case basis. This means that while all of the general principles which help to ensure business certainty still apply the Commission does to an extent come at each of these matters afresh so that it can fully take account of technological developments and changes in product design and delivery, market structures and consumer attitudes and behaviour. No avenue has been blocked off and the Commission is constantly seeking to update its knowledge of what is happening.

Today I will outline the framework used by the Commission when considering any merger proposal. As an example, I will discuss the Commission’s 1997 consideration of the Westpac and Bank of Melbourne (Westpac / BML) merger. I will concentrate today on those aspects of the merger analysis and decision that have been most widely discussed by industry commentators, namely market definition issues and the access undertakings.

I will also make some specific mention of the Commission’s attitude to various issues in the financial services sector, including mergers between the big four banks, mergers between banks and non-bank institutions and some recent international developments in the sector.

2. THE COMMISSION’S APPROACH TO MERGERS

The Commission’s role is to enforce section 50 of the Trade Practices Act 1974 (the Act), which prohibits mergers or acquisitions that would have the effect of substantially lessening competition in a substantial market in a State or Territory. In 1996, the Commission published its Revised Merger Guidelines setting out the process for, and issues relevant to, its administration of the merger provisions. The guidelines do not bind the Commission, but rather provide parties with an indication
of matters the Commission considers when investigating mergers. They also aim to guide industry in setting out submissions which will assist the Commission in its consideration of proposed acquisitions.

The Merger Guidelines set out a five stage process for the Commission’s assessment of substantial lessening of competition. I intend to consider each of these in turn, focussing particularly on the issue of market definition.

2.1 MARKET DEFINITION

In establishing the market boundaries, the Commission seeks to include all those sources of closely substitutable products, to which consumers would turn in the event that the merged firm attempted to exercise market power. Further, the Commission looks at the market at the time at which the merger proposal comes to it.

For example, in the case of the Westpac Banking Corporation (Westpac) / Challenge Bank merger in 1995, the Commission took the view that the banking market was best viewed as a cluster of retail banking services which banks delivered to consumers as a bundle. However, in assessing the Westpac takeover of the Bank of Melbourne (BML) in 1997, the Commission took the view that the cluster approach was no longer appropriate. This is because a sufficient proportion of customers were then prepared to unbundle key components of the cluster and to shop around for the best price on those components - especially home loans. That is, enough customers were unbundling one or more components of the cluster to the extent that banks were having to compete on price for those individual components. In other words, the Commission in considering the Westpac / BML proposal adopted a multi-product analysis for banking markets.

2.1.1 CONVERGENCE: MERGERS INVOLVING BANKS, LIFE INSURERS AND FUND MANAGERS

The degree of convergence between banks and fund managers, including insurance companies, is also one which may impact on the Commission’s analysis of relevant markets in the financial services sector in coming years. The association between banks and insurance companies is not new.
The Commission has had some experience in considering the overlapping activities of banks and insurance companies. For example, in 1991, Westpac and AMP proposed a strategic alliance which would have the same effect as a merger in that it restrained Westpac from entering the life insurance sector and AMP from entering retail banking for a ten year period. While the then Trade Practices Commission (TPC) (a predecessor of the Australian Competition and Consumer Commission) did not oppose the alliance, it did express concern at the nature of the restrictive covenants, particularly given that Westpac was emerging as a serious contender in the life insurance industry. Ultimately, the alliance was undone.

In addition, the Commission examined but did not oppose the Colonial Mutual Life acquisition of State Bank of NSW in January 1995. Market enquiries at the time indicated that the two entities operated in separate markets and there were no cross-holdings or other interests which caused competition concerns. Nor did the Commission oppose the amalgamation of Metway Bank, Suncorp Insurance and Finance, and the Queensland Industry Development Corporation (QIDC) in 1998 for similar reasons.

In the current business climate, I note that AMP has a banking licence and is using this to compete in the home loans market. Further, banks have for some time been involved in funds management, including life insurance and superannuation. They also appear to be increasing their focus on retail investment products. In this context, Westpac is reported as having moved a significant proportion of customers funds from deposits to funds management. However, media reports also suggest that insurance companies are likely to encounter some difficulty making inroads into banking whereas banks are better placed to strengthen their funds management business due to ongoing relationships with customers.

Given that all these reports are anecdotal, it would be a bold leap to suggest the market has converged to a point where there is a single market encompassing banking and funds management. There is a need to look at the supply and demand substitutability and the extent to which the behaviour of market participants justifies the view that the convergence has reached a point where the market can be considered a single one.

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1 See eg Lekakis, G “AMP enters home loan war” *Australian Financial Review* 18 September 1998, pg 1
Therefore, as a provisional view, the Commission would start from the position that funds managers and banks operate in different markets. However, such a view would be thoroughly tested as part of the Commission’s response to any such merger proposal which might be put to it and would be determined by the climate of the industry at the time of the proposal.

In respect of the geographic dimension, the Commission concluded in the Westpac / BML matter that the geographic dimension of most of these markets was still State-based, although the home loan market was becoming a national market.

Although the market for banking services is changing through the introduction of new technologies, these new distribution methods are considered by the Commission to be, in many ways, complements to, rather than substitutes for, traditional channels, such as branches, especially for day to day banking products like transaction accounts. If customers’ use of phone banking and internet channels lead to a significant level of cross-border banking which obviates the necessity for a local presence, that would lead to a reconsideration of the geographical dimension.

2.2 THE LEVEL OF MARKET CONCENTRATION

When assessing a merger proposal under section 50 of the Act, the Commission first examines the level of concentration in relevant markets to determine whether the merger crosses certain thresholds. Usually, if:

- the market share of the merged entity is above 40%; or
- the combined market shares of the four largest market participants is above 75% and the share of the merged entity is above 15%;

then the merger is likely to merit detailed consideration.

If the market concentration ratio falls outside the thresholds, the Commission will generally determine that substantial lessening of competition is unlikely. However, given the importance of a competitive financial services sector to the well-being and efficiency of the Australian economy, the Commission may be minded to look closely at a merger between two large financial service providers even if the concentration thresholds are not triggered.
In the case of the National Mutual / Lend Lease proposal in 1997, the Commission examined a number of possible markets in the financial services industry and found that, even if narrow market definitions were to be adopted, the concentration thresholds would not be crossed as a result of the merger. On the basis of these concentration figures, the Commission found that the proposal would be unlikely to substantially lessen competition in any relevant market. As it turned out, this proposal did not proceed for commercial reasons.

Last year the Commission examined AMP’s bid for GIO. In that case, the Commission was conscious that, in a broad sense, the companies were not involved in the same activities. AMP is essentially a funds management, life insurance and superannuation company and GIO is essentially a general insurance and re-insurance company. There was, nevertheless, some overlap. For example, the acquisition consolidated AMP’s number one position in life insurance and elevated it to second in retail investment products and third in general (non-life) insurance. In all these areas, however, there were a substantial number of strong competitors and there did not appear to be any problems with concentration.

2.3 IMPORT COMPETITION

Both potential and real import competition are assessed. If import competition is an effective check on the exercise of domestic market power, it is unlikely that the Commission will intervene in a merger. In the case of retail banking services, however, there is little evidence of overseas suppliers constraining domestic participants.

2.4 BARRIERS TO ENTRY TO THE RELEVANT MARKET

If the market is not subject to significant barriers to new entry, incumbent firms are likely to be constrained by the threat of potential entry, to behave in a manner consistent with competitive market outcomes. A concentrated market is often an indication that there are high barriers to entry. In the financial services markets, such as banking and funds management, economies of scale and sunk costs to establish a reputation, meet prudential requirements, etc are substantial barriers to entry.
Section 50(3) of the Act also contains a non-exhaustive list of factors that the Commission may take into consideration in assessing a merger. These include whether the merged firm will face countervailing power in the market; whether the merger will result in the removal of a vigorous and effective competitor; or whether the merger is pro-, rather than anti-competitive.

3. OPPOSITION TO MERGERS

The Commission rarely opposes mergers. In the event that the Commission has concerns about a proposed merger or indicates that it will oppose a merger, the parties have a number of options other than abandoning a proposal. They may amend the proposal, usually by means of divestiture, to address the Commission’s concerns. The parties can also apply for authorisation or offer section 87B court enforceable undertakings to the Commission.

If the parties decide to proceed with a merger in spite of Commission opposition, the Commission would normally seek an urgent interlocutory or interim injunction. However, the Commission is not the final arbiter. Ultimately it must prove to the satisfaction of a court that the merger would substantially lessen competition.

In January 1998, the Commission published a detailed statistical analysis of mergers. The statistics show that in the latest year available 1996-97 that only about five per cent of mergers were opposed and opposition was lifted in respect of some of them once satisfactory undertakings had been given. In some respects the five per cent figure overstates the extent of the Commission’s opposition because many mergers do not raise competition issues at all and are not considered by the Commission. On the other hand, there may be some mergers that are not brought forward to the Commission because the nature of the section 50 prohibitions is well known. However it is not the Commission’s experience that business people are shy in approaching the Commission to sound it out about possible mergers, even impossible looking mergers, although there have not been many of these.

3.1 AUTHORISATION
One of the most powerful tools available to a company that risks breaching section 50 is to seek an authorisation. Australia, unlike many other countries provides for the possibility of granting an authorisation which permits a party to be in breach of the Act in the event that there are public benefits to offset the competition concerns.

Authorisation is a public process which allows all interested parties, as well as the participants themselves, to make submissions to the Commission. The Commission has a time limit of 30 days to consider a merger authorisation application after the parties provide sufficient information for the application to be assessed. For complex matters, the time limit can be extended to 45 days. If it is sufficiently concerned about the detriment which may flow from an acquisition if it were to proceed, the Commission can grant conditional authorisation if it sees that there are ways the parties can address its concerns. If the Commission denies the application for authorisation, the parties may apply to the Australian Competition Tribunal to have the determination reviewed.

3.2 SECTION 87B UNDERTAKINGS

Parties may also offer section 87B court enforceable undertakings to alleviate the Commission’s concerns about the merger. I note in this context that the Commission has been accused in some quarters of using undertakings for the purposes of market re-engineering. In deciding whether to accept undertakings offered to it by the parties, the Commission consciously strives to ensure that the undertakings are necessary to remedy the problem created by the merger. It also looks at whether the undertakings are proportionate in the product, geographic and temporal dimensions to remedy the competition problems. Any such undertakings to the Commission must also be effective in that they are enforceable and they must be transparent.

4. GLOBALISATION AND THE “NATIONAL CHAMPIONS” ARGUMENT

Business people frequently raise the question of whether or not the merger provisions of the Act prevent the mergers necessary for Australian businesses, including financial service providers, to reach the size necessary to take part in global markets.

The answer to this is rarely, if ever, and, if so, then in circumstances where it is on balance undesirable because of the anti-competitive effect in the Australian market. The fact is that the Commission has not
in the last seven years opposed mergers where imports make up more than 10 per cent of the relevant market (this is not a rigid rule but it is a fact of history). In other words, the Commission has not opposed mergers in sectors already exposed to international competition. It is in this sector that the argument for firms needing to be large to take part in world markets is most relevant. Moreover, even where there is no import competition, the Commission opposes relatively few mergers, and where it does some of them can be resolved by undertakings (as was the case with the Westpac / Bank of Melbourne merger).

It is often argued that Australian businesses need to develop the “critical mass” necessary to compete internationally. However, I think it is important to point out that obstacles to export growth may face industry participants of all sizes. It is not apparent that, simply by entering a collaborative arrangement like a merger or joint venture, a participant’s ability to compete internationally is enhanced. Size is often not necessary to enhance the ability to compete on world markets. It has been convincingly argued that, in many cases, domestic rivalry rather than national dominance is more likely to breed businesses that are internationally competitive. A recent report to the government which reviewed business programs in the context of an increasingly competitive global market noted that a lack of domestic competition was one of a number of impediments to building globally sustainable businesses in Australia.2

As I have already discussed, if a merger is anti-competitive, authorisation is possible on public benefit grounds. Since 1993, the Act explicitly has stated that export generation, import replacement or contributions to the international competitiveness of the Australian economy are public benefits.

Clearly the framework of the Act is not an obstacle to allowing Australian businesses to merge to achieve the scale necessary for international competitiveness providing there is a sufficient public benefit. There are in fact many cases where authorisations have been permitted. Over half of all merger authorisation applications have in fact been successful. A number of them have related to cases where the merger would cause a substantial reduction in competition in Australia but would bring international type benefits. There are of course instances in which the trade off or loss of competition in the home market versus benefits to Australia from a firm playing a role in world markets is unfavourable in terms of the public interest and in some cases mergers create monopolies or ‘home champions’ in the home market. They are not necessarily firms well prepared to compete in

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world markets as Professor Michael Porter’s study, *The Competitive Advantage of Nations* demonstrated.

5. **THE WESTPAC AND BANK OF MELBOURNE MERGER**

I will now discuss the Commission’s 1997 consideration of the Westpac / BML merger.

The Westpac / BML merger was the first time that the Commission has had reason to examine a bank merger in detail since the Westpac acquisition of Challenge Bank in 1995. It required the Commission to revisit the definition of banking markets and to assess the changes that had taken place in the industry, especially through the increase in non-bank competition for the provision of home loans.

5.1 **MARKET DEFINITION ISSUES**

5.1.1 **CLUSTER VERSUS MULTI-PRODUCT APPROACHES TO PRODUCT DEFINITION**

Probably the most important aspect of the approach to market definition employed by the Commission in considering the Westpac / BML proposal was the adoption of a multi-product analysis for banking markets.

As previously mentioned, at the time of the Westpac / Challenge Bank decision in September 1995, the Commission had taken the view that the banking market was best viewed as a cluster of banking services which banks delivered to consumers as a bundle.

What had changed in the space of two years to cause the Commission to consider that the cluster had broken-up?

A sufficient proportion of customers are now prepared to unbundle key components of the cluster and to shop around for the best price on those components - especially home loans. That is, enough customers are unbundling one or more components of the cluster to the extent that banks are now having to compete on price for those individual components.
As would be expected, the larger the potential dollar savings available from shopping around, the greater the likelihood that consumers will not acquire all of their banking products and services as a bundle. Since home loans are the largest dollar item in most people’s portfolio of banking products they have proven to be the most price sensitive.

Adopting this approach for the Westpac / BML merger, the Commission identified the following distinct product (sub-)markets:

1. Deposits
2. Home Loans
3. Personal Loans
4. Small Business Banking
5. Credit Cards
6. Transaction Accounts

5.1.2 GEOGRAPHIC DEFINITION OF BANKING PRODUCT MARKETS

The Commission concluded that most of these markets were still State-based, although the home loan market was becoming a national market. This conclusion was consistent with the earlier Westpac / Challenge Bank merger analysis and was also fundamentally in-line with the findings of the 1997 Financial System (Wallis) Inquiry (FSI).

5.1.3 DEPOSITS

The Commission concluded that the deposit market primarily consisted of products such as term deposits and longer term ‘investment’ type deposits.

The FSI reported that virtually no banks were able to raise deposits in States where they have no branch representation.

5.1.4 HOME LOANS
There was and continues to be evidence to suggest that many regional banks are drawing an increasing number of their home loan customers from interstate. The Commission agreed with the conclusion reached by the FSI that the market for home loans is becoming national at such a rate that it was appropriate to adopt a national geographic definition for its analysis of the home loan market.

5.1.5 PERSONAL LOANS

Personal loans were considered by the Commission to be a separate product group, based on evidence that customers will often acquire their personal loans separately from the institution where they acquire most of their other banking services.

The FSI reported that more customers have their personal loan and transaction account with different institutions, than those that bundle the two.

There was a wide range of suppliers for personal loans in Victoria. Competition was provided by non-bank suppliers such as building societies, credit unions, finance companies and others such as motoring organisations, especially in the provision of personal loans for cars. Most suppliers appeared to adopt a national, rather than a regional, pricing strategy for their personal loans. On the demand side, however, information supplied to the Commission by regional banks as to their customer behaviour profile indicated that the market for personal loans was likely to be regional. The Commission considered, therefore, that this market was likely to be regional.

5.1.6 SMALL BUSINESS BANKING

Small businesses typically require two or more of the following functions from financial institutions: credit; cash transaction facilities; physical depository facilities (especially after hours); a banking relationship; and processing for credit card and electronic funds transfer at point of sale (‘EFTPOS’) transactions.

The need for cash-based small businesses to have transaction and / or depository facilities which are physically proximate implies that convenient access to branches is very important. This gives those banks with an extensive branch network an advantage in attracting small business custom. The
importance of an ongoing banking relationship to small businesses will also tend to restrict their choice
to locations that can be easily visited if advice is needed or problems arise.

The above characteristics suggested to the Commission that a separate ‘cluster’ of products / services
exists in relation to the small business banking sector, and that this was a localised market, the
geographic dimension of which, at its widest, is State-based.

5.1.7 CREDIT CARDS

Credit cards combine the features of transaction accounts and personal loans, yet they are an imperfect
substitute for either. As a consequence, the Commission considered it appropriate to treat the
provision of credit card services as a separate product market.

Survey evidence compiled for the FSI shows that some 80% of credit card customers have a credit card
with the same institution with which they have a transaction account.

While it is certainly possible to operate a credit card issued by an interstate institution, the available
evidence on customer behaviour suggests that the market for credit cards is still regional at this point.

5.1.8 TRANSACTION ACCOUNTS

As regards the geographic dimension of the transaction accounts market, the FSI referred to survey
evidence that 93% of consumers require access to a branch at some time to do their everyday banking,
which highlights the importance of a branch network for transaction banking.

The FSI concluded that ‘while new technologies and new distribution mechanisms have the potential
to make branches less relevant and the marketplace national, this has not yet happened in Australia for
most retail banking products’ and, further, that a physical branch presence is still important to
initiating some forms of new business - including, at this time, transaction accounts.

On this basis, emphasising customer reliance on branch banking, and suppliers’ reliance on a branch
network to acquire and service their customer base, the market for transaction accounts was considered
by the Commission to be state based.
5.1.9 COMPETITION ASSESSMENT

After defining the appropriate product and geographic dimensions, the Commission assessed the level of concentration in each of the six product markets and examined the other merger factors relevant to assessing the competition impacts of the proposed merger.

For five of the six product markets it was concluded that the Westpac / BML merger would not be likely to substantially lessen competition. However, the Commission felt that in the transaction accounts market in Victoria there was a clear likelihood of a substantial lessening of competition post-merger.

5.1.10 UNDERTAKINGS

The Commission considered whether the substantial anti-competitive effect that it perceived in the Victorian transaction accounts market arising from the proposed merger could be reduced by appropriate undertakings under section 87B of the Act which would allow the merger to proceed. In the course of the Commission’s assessment of the competition consequences of the proposed merger, Westpac acknowledged the Commission’s concerns about the anti-competitive impact of the merger and offered to provide undertakings aimed at remedying the potential substantial lessening of competition in the Victorian transaction accounts market.

If the Commission’s concerns were to be addressed it required a targeted, proportionate, transparent, and enforceable response from the parties to remedy the potential substantial lessening of competition in the transactions account market.

The undertakings were focused on maintaining and promoting competition in the transactions account market in Victoria.

The undertakings recognise that a key requirement for institutions to compete successfully in the transaction accounts market is the ability to issue EFTPOS and ATM cards with wide acceptance at competitive costs. They provide for EFTPOS and ATM access arrangements to Westpac’s electronic
networks for the Victorian customers of existing and new financial institutions carrying on business in the Victorian transaction accounts market.

In addition, the undertakings make specific provisions, for a period of three years post-merger, in relation to the level of ‘autonomy’ of the management of the merged entity’s Victorian operations in order to allow the merged entity to compete as vigorously with its rivals as BML had done in the past by offering competitive products, prices and customers service.

5.1.11 ACCESS

As noted above, market inquiries identified that a substantial lessening of competition was likely to occur in the transaction accounts market in Victoria if BML were to be acquired by Westpac.

As already discussed, a key requirement for institutions to compete successfully in the provision of transaction accounts is the ability to issue EFTPOS and ATM compatible cards with wide acceptance at competitive costs. This is because customers’ decisions as to whether they open and operate transaction accounts with particular financial institutions will be significantly influenced by the coverage of their electronically operated cards, that is the number and geographic distribution of ATM and EFTPOS terminals at which they can transact their business.

In the past, smaller institutions have not always been able to get access to the electronic networks of the majors on reasonable commercial terms, mainly because of the bilateral negotiations involved and the weaker bargaining position of the smaller institutions. There are signs that this is improving with some of the majors now looking to increase their throughput of transactions rather than extracting higher prices per transaction, but it can still present a major barrier to entry / expansion for smaller players in the transaction services market, especially those without an ATM or EFTPOS acquiring network of their own.

The undertakings seek to remedy this by providing EFTPOS and ATM access arrangements for the Victorian customers of smaller financial institutions and new entrants to the Victorian transaction accounts market.
The undertakings make access available on reasonable commercial terms to small and new competitors in Victoria, including interstate based regional banks, building societies, credit unions and new entrants from other sectors or overseas, so long as they carry on business in Victoria.

The terms of access for these institutions, including price, are agreed between the parties where possible. However any disputes will be determined by an independent expert, approved by the Commission.

New entrants to the transactions account market who do not have their own ATM or EFTPOS merchant acquiring network perhaps stand to gain the most through these undertakings (eg overseas banks or insurance companies that get a banking licence (eg AMP) or mortgage originators expanding into this area).

The undertakings create rights for access seekers that they did not enjoy previously. In this sense, the undertakings are an important first step in establishing greater transparency, fairness and competition in relation to access to electronic payments networks which are necessary for modern transactions account banking. Along with the adoption by the Government of the FSI recommendations, and the Commission’s draft determination regarding the Australian Payments Clearing Association’s (APCA’s) self-regulatory rules for clearance of consumer electronic payments, these undertakings are at the forefront of opening up third party access to payments systems in this country.

6. THE “FOUR PILLARS” POLICY

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3 On the 20th August 1998, the Commission issued a draft determination proposing to deny authorisation to APCA in respect of its proposed industry self-regulatory rules for the Consumer Electronic Clearing System (CECS). These proposed rules relate to the clearing of debit card transactions effected on the ATM and EFTPOS networks and the issue of access to these networks, and were agreed by banks, building societies and credit unions under the umbrella of APCA. The Commission considered that the proposed CECS self-regulatory rules were substantially incomplete in terms of specifying the standards and procedures relevant to participation in the ATM and EFTPOS networks and the effective clearing and settlement of debit card transactions generated within those networks. In its draft determination the Commission indicated that should APCA further develop and amend the proposed CECS rules along the lines outlined in the draft, it is likely that the rules would result in net public benefit so that authorisation may be granted by the Commission. Such enhanced CECS rules, addressing both the technical and commercial terms of access to the ATM and EFTPOS networks, would also be an appropriate industry self-regulatory response. APCA has submitted a revised version of their rules to the Commission and the Commission is now considering comments received from interested parties about the rules. The Commission expects to release a draft determination concerning the revised rules by the end of this year.
Over the past twelve months, there has been speculation in the press about the Government lifting the so-called “four pillars” policy to permit mergers among the big four banks. These reports suggest that the Government would want to see a significant improvement in competition among the majors before allowing mergers. Mr Howard has said that the Government would have to be satisfied there was further competition in relation to small business, across the whole range of services, before it could be satisfied that there was sufficient competition to allow mergers among the big four.

Government policy aside, the press has also been speculating that the Commission would allow big bank mergers if two well matched competitors emerge. It is simplistic to suggest that if two merged entities would be well matched as competitors this of itself will satisfy the Commission that the merger does not breach section 50 of the Act. As I have already discussed, the competitive impact of a merger is assessed against a range of criteria and the Commission has a process which it follows in carrying out its assessment.

At this stage, the issue of mergers between the big four banks is not one which the Commission has analysed in any detail or formed a prior view on. In any event the question of mergers among the big four banks is an academic one so long as the four pillars policy remains in place. The Commission will have to look at each case on its merits but only if the policy is lifted.

7. MERGERS INVOLVING BANKS AND NON-BANK INSTITUTIONS

On the broader issue of mergers which might take place between banks and other financial institutions, particularly insurance companies, the Commission has relatively few concerns. As I have already mentioned, the Commission did not oppose the Colonial Mutual Life acquisition of State Bank of NSW in January 1995 nor did it oppose the amalgamation of Metway Bank, Suncorp Finance and Insurance and Queensland Industry Development Corporation in Queensland in 1998. Prior to these the Commission had no objection to the proposed ANZ / National Mutual venture in 1990 although this was considered under the dominance test prior to the amendment of s 50.

It is interesting to note that a significant rationalisation is taking place between large and small institutions. The KPMG 1999 Financial Institutions Performance Survey reports that 16 acquisitions, involving 31 institutions, have occurred since January 1997. The level of merger activity is expected
to remain high as the smaller institutions seek greater economies of scale, increased geographic coverage and are forced to cope with growing industry pressure to pursue merger opportunities.

8. INTERNATIONAL DEVELOPMENTS

As you would be aware, there has recently been a spate of mergers and acquisitions occurring between large financial institutions in North America, Europe and Japan. Some local commentators and industry analysts have argued that these mergers have had some very direct and salient implications for the banking industry in Australia.

Circumstances such as the formation of large trading blocs in both Europe and North America may be driving such mergers but they do not exist in Australia.

The Asian financial crisis may well lead to further bank mergers in various Asian countries: but they are likely to be related more to prudential considerations than to achieving efficiency gains from rationalisation, although the latter could well be a result.

Additionally, some of these international merger proposals have been blocked by the relevant competition authority. For example, the Canadian Competition Bureau concluded that the merger of the Royal Bank of Canada and the Bank of Montreal, and the merger of the Canadian Imperial Bank of Commerce and the Toronto-Dominion Bank were likely to breach Canadian competition law. The Canadian Minister of Finance also rejected the merger proposals, effectively prohibiting the mergers in their proposed forms.

Indeed, I believe that the factors driving merger activity overseas are as much about specific regulatory, cyclical and institutional issues pertaining to particular jurisdictions as they are about the wider commercial imperatives impacting on financial institutions at home and abroad. In this context, the implications for local financial institutions of merger activity overseas needs to be interpreted carefully and with regard to a full set of information about the precise context in which merger activity is occurring in other jurisdictions.

9. CONCLUSION
By way of conclusion, I will run the risk of repeating a slightly worn out catchphrase in the context of the future development of the financial services sector, by observing that the only certainty will be uncertainty.

Many factors are combining to create conditions for change in banking markets - new technology, globalisation of markets, the introduction of far reaching regulatory reforms, changes in consumer behaviour and the emergence of new products and industry players.

The ultimate direction, form and pace of these changes is never an easy thing to judge *ex ante* and it is not something that the Commission is in the business of trying to second guess. That is why the Commission will continue to assess mergers as and when they arise on a case-by-case basis.

The financial sector continues to be characterised by significant complexity, information problems, bounded decisions and large dollar purchases on the part of the average consumer. Robust, consistent, responsive and cost-effective consumer protection, therefore, will remain important.

Thank you.