



Australian  
Competition &  
Consumer  
Commission

16 October 2009

## Statement of Issues — Woolworths Limited/Lowe's Companies, Inc. - proposed acquisition of Danks Holdings Limited

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (**ACCC**) in relation to the proposed acquisition of Danks Holdings Limited (**Danks**) by a joint venture between Woolworths Limited (**Woolworths**) and Lowe's Companies, Inc. (**Lowe's**) (**proposed acquisition**).
2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website at [www.accc.gov.au](http://www.accc.gov.au)) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 23 October 2009 and anticipates making a final decision by 11 November 2009. 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, visit the Mergers Register on the ACCC's website at [www.accc.gov.au/mergersregister](http://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.

### Background

5. On 3 September 2009, the ACCC commenced its review of the proposed acquisition.
6. The proposed acquisition forms part of Woolworths' broader plans to enter the hardware and home improvement sector. Woolworths has entered into a joint venture with United States-based home improvement retailer Lowe's to undertake the acquisition of Danks and establish a network of at least 150 company-owned 'big box' home improvement stores in Australia.

## **The parties**

### **Woolworths Limited**

7. Woolworths is a large Australian retailer whose businesses include the Big W chain of discount department stores, Woolworths and Safeway supermarkets, as well as electronics, liquor and petrol retailing chains. Woolworths currently has a limited presence in the hardware and home improvement sector; it supplies a range of hardware products in its Big W discount department stores and a smaller range in its supermarkets.

### **Lowe's Companies, Inc.**

8. Lowe's is a large US-based hardware and home improvement retailer with over 1,600 large format 'big box' stores of approximately 10,000m<sup>2</sup> each. Lowe's has no Australian operations at present.

### **Danks Holdings Limited**

9. Danks' principal business is the wholesale distribution of hardware products and related services to independently owned and operated<sup>1</sup> hardware retailers including Danks member stores and other non-affiliated stores.
10. Danks' members operate stores under the banners of "Home Timber and Hardware", "Thrifty -Link Hardware" and "Plants Plus Garden Centres". In addition to supplying them with a wide range of products, Danks provides its members marketing and promotional services, retail support services and financial benefits (e.g. rebates) which are derived from the group's buying power with suppliers. Members pay fees to Danks in return for these services.
11. There are over 500 Danks members and over 900 (non-member) independent hardware retailers supplied by Danks. Both the member and non-member stores supplied by Danks are generally small to medium format stores (not 'big box' stores).
12. Danks' stores account for approximately 15% of revenue generated by hardware retailing in Australia.<sup>2</sup>

## **Other industry participants**

### **Bunnings**

13. Bunnings is a large retailer of hardware and home improvement products, operating 160 warehouse stores and 32 small format stores in Australia.
14. Bunnings is part of the Wesfarmers Group, an ASX-listed Australian company with business activities across a range of industries. In addition to hardware and home improvement, the Wesfarmers Group operates supermarkets, liquor stores, discount department stores and office supply stores.
15. Wesfarmers, primarily through Bunnings, accounts for approximately 50% of revenue generated by hardware retailing in Australia.<sup>3</sup>

---

<sup>1</sup> There is also one company-owned store in Katoomba, NSW.

<sup>2</sup> IbisWorld – Hardware Retailing in Australia, June 2008. This figure is provided as an indication of the relative size of Danks stores in comparison to other key industry participants and should not be interpreted as Danks' market share in any relevant market.

## **Mitre 10**

16. Mitre 10 has a branded network of over 400 member stores throughout Australia which operate under the Mitre 10 and True Value Hardware brands. Mitre 10's business is similar to that of Danks. It provides wholesale supplies to member stores and some other non-affiliated retailers. Stores supplied by Mitre 10 are generally small to medium format hardware stores. Some stores are company owned and operated and others are independently owned and operated.
17. Mitre 10 accounts for approximately 12% of revenue generated by hardware retailing in Australia.<sup>4</sup>

### **Smaller chains and independents that are not part of banner groups**

18. In addition to the above retailers and wholesalers, there are a number of smaller chains of hardware and home improvement stores that tend to be regionally based. Examples include Dahlsens and Magnet Mart. There are also many independent hardware stores which are not members of any banner group.

## **Retail formats**

19. In Australia, there are a range of hardware and home improvement retail store formats.
20. Generalist hardware stores offer a range of hardware and home improvement products from several categories. These include 'big box' stores, which are large, free-standing, warehouse style destination<sup>5</sup> stores such as those operated by Bunnings, medium format hardware stores including many Home Hardware and Mitre 10 Stores, and smaller format convenience stores including Thrifty-Link stores.
21. Specialist stores tend to concentrate on a segment or product category of hardware, home improvement or garden products. Examples include Reece and Tradelink (both specialists in plumbing and bathroom products). In addition to hardware-focussed retail stores, some retailers offer a select range of hardware products as part of a broader retail offering (e.g. Big W, K Mart, Go-Lo).
22. Hardware and home improvement retail stores can be corporate owned (i.e. part of a chain of retail outlets which are commonly owned and operated), member stores (i.e. part of a group of stores that operate under a common banner name, but are independently owned and operated), or operate independently of any member group. Stores compete primarily on the basis of a total product/service offer; this includes such factors as the store's range of products, prices, service and advice levels, and convenience of location and opening hours. The degree of emphasis placed on each of these factors may differ depending on the store itself, the format of the store and the target customer.

---

<sup>3</sup> IbisWorld – Hardware Retailing in Australia, June 2008. This figure is provided as an indication of the relative size of Bunnings in comparison to other key industry participants and should not be interpreted as Bunnings' market share in any relevant market.

<sup>4</sup> IbisWorld – Hardware Retailing in Australia, June 2008. This figure is provided as an indication of the relative size of Mitre 10 in comparison to other key industry participants and should not be interpreted as Mitre 10's market share in any relevant market.

<sup>5</sup> A destination store is one that customers will initiate a trip specifically to visit.

## **Wholesale supply**

23. Some hardware chains, such as Bunnings, are vertically integrated; they conduct their own wholesale operations using their own warehouse and distribution networks. They obtain some products via direct to store delivery.
24. Other retailers most commonly obtain their stock through wholesalers, buying groups, direct from manufacturers, or from a combination of these sources.
25. Wholesalers act as an intermediary between manufacturers and retailers. The two large independent wholesalers, Danks and Mitre 10, supply independent retailers (both members and non-members) with a broad range of products. Some of these products are supplied through the wholesaler's warehouse and distribution service, while others are supplied directly from manufacturers through the use of a charge back system operated by the wholesaler.
26. In addition to wholesalers, there are also a number of buying groups, who negotiate on behalf of members to obtain volume discounts from suppliers for certain products or product categories. Members of buying groups generally purchase products directly from suppliers on the basis of general terms negotiated through the buying group. Examples of buying groups are National Building Suppliers Group (**Natbuild**) and Hardware and Building Traders (**HBT**). Some retail stores are members of a buying group in addition to obtaining most of their supply from a wholesale supplier such as Danks. For example, they may obtain tools and other hardware products from the Danks warehouse, and timber direct from a supplier on terms negotiated by HBT.
27. Some retailers obtain products directly from manufacturers, although in most cases this is done only for a relatively small proportion of the products the retailer buys. Manufacturers generally set minimum order requirements (either by quantity or value).

## **Market inquiries**

28. On 8 September 2009, the ACCC commenced market inquiries regarding the proposed acquisition. A range of industry participants were consulted including wholesale suppliers; manufacturers; retailers including independent stores, banner group members and company-owned retailers.

## **Market definition**

29. The ACCC's preliminary view is that the competitive effects of the proposed acquisition should be assessed in the context of the following markets:
  - local markets for the retail supply of the following categories of hardware and home improvement products together with a related service offering to do-it-yourself (**DIY**) and trade customers:
    - i. tools and hardware
    - ii. bathroom and kitchen materials
    - iii. plumbing supplies
    - iv. paint and decoration
    - v. garden supplies

- vi. timber and building supplies
- vii. lighting and electrical
- viii. outdoor living
- ix. flooring
- x. storage and organisation
- xi. window furnishing.

- regional markets for the wholesale supply of the above products to retailers.

## **Retail markets**

### *Product markets*

30. Different retail stores seek to attract customers via their total product/service offering. The total product/service offering includes the range of products the retailer brings together in one place for the customer as well as the services it provides, such as specialist advice, delivery and convenient payment methods (e.g. trade accounts). Different retailers put varying degrees of emphasis on each of these factors.
31. The ACCC's inquiries indicate that while stores of similar formats (e.g. two 'big box' stores) are each other's closest competitors, there is also competition between generalist hardware stores of different formats (e.g. a medium sized Home Hardware store and a Bunnings warehouse) and between generalists and specialists (e.g. Mitre 10 and Reece stores compete for bathroom product sales).
32. The total product/service offering differs between stores and chains, but it also differs markedly between different store formats, and this influences the closeness of competition between stores of different formats. In this sense, while there is competition between retailers of different formats, Bunnings is likely to be the closest competitor to Woolworths' retail stores because of the relative closeness of their 'big box' offerings.

### *DIY vs trade customers*

33. The ACCC has considered whether separate markets exist for retail sales to DIY and trade customers.
34. While industry participants do draw a distinction between DIY and trade customers based on their different buying habits (for example, whether they use trade accounts), there is a degree of overlap between the products they buy. The ACCC's preliminary view is that these two categories of customers are not sufficiently differentiated to be in different markets, but the differences between them may mean that any competition effects of the transaction affect them differently.
35. While customers' preferences and expectations vary between individuals and also depend on the purpose of a customer's shopping trip, the ACCC's inquiries indicate that, broadly speaking, DIY customers value the ability to shop from a range of products at competitive prices with a degree of personalised service. In comparison, trade customers are time sensitive, valuing consistently prompt service, the ability to open a trade account or gain store credit, reliability of supply and delivery of products to the worksite if required.

36. The ACCC's inquiries also indicate that compared with DIY customers, trade customers are more likely to use specialist hardware retailers in addition to, or as substitutes for, generalist hardware stores such as Bunnings, Mitre 10 and Danks banner stores. Bulk purchases are more common amongst trade customers, and purchases are skewed towards timber and building materials. However, despite the fact that trade customers regularly purchase products from specialist suppliers and directly from manufactures, some trade customers also value the ability to purchase a range of products from one store offered by 'big box' and larger format stores.

#### *Geographic scope*

37. On the basis of its inquiries to date, the ACCC has found that competition for the retail sale of hardware and home improvement products occurs in local markets. Most customers prefer to shop at stores within close proximity to their homes, which means that the range of stores which they consider to be close substitutes are generally those within a relatively short driving distance from their homes. The ACCC's inquiries suggest the scope of the local markets in regional areas is likely to be somewhat larger, since customers are better able and more willing to travel further for these products than in more congested metropolitan areas.

#### **Wholesale markets**

##### *Product market*

38. The ACCC's preliminary view is that there are regional markets for the wholesale supply of hardware and home improvement products to retailers. Wholesale supply includes supply via wholesalers' warehouses and supply direct from manufacturers through the use of a wholesaler's charge back system.
39. Vertically integrated wholesalers who also operate retail stores (e.g. Bunnings) form part of this market, as do independent wholesalers with no retail stores. While vertically integrated wholesalers like Bunnings do not compete to supply independent retailers, the prices charged by wholesalers like Danks and Mitre 10 to independent retailers are still constrained indirectly by the retail prices charged by Bunnings, because the effect of Bunnings competing with the independent retail customers of the wholesalers flows through to put pressure on the independent wholesaler to offer competitive prices in order to ensure that the retailers they supply do not lose sales to the vertically integrated retailers.
40. Mitre 10 is the closest competitor to Danks in this market and the only other player with a similar wholesale warehouse offer. Notwithstanding differences in their membership models, Danks and Mitre 10 each supply a large range of products to retail stores, and there is considerable overlap between the product range and the services they offer.
41. While there are other sources of supply available to retailers including direct supply from manufacturers and wholesale buying groups, which many retailers use to complement supply from Danks or Mitre 10, market inquiries indicate that these suppliers do not constitute close competitive alternatives to the type of wholesale supply offered by Danks and Mitre 10 because of differences in their products range and service offering. This is discussed further below.

### *Geographic scope*

42. The ACCC's preliminary view is that the market for the wholesale supply of hardware and home improvement products to retailers exists on a regional scale and that transit times and transport costs are significant factors in determining the geographic dimension of these markets.
43. While the ACCC has yet to define the precise scope of these regional markets, it is noted that Danks supplies wholesale customers from distribution centres located in Melbourne (supplying stores in Victoria, Tasmania, southern New South Wales and South Australia), Welshpool (Western Australia) and Sydney (supplying stores in New South Wales and Queensland). This provides some guidance as to the likely size of the relevant markets.

### **With/without test**

44. In assessing a merger pursuant to section 50 of the *Trade Practices Act 1974*, the ACCC must consider the effects of the transaction by comparing the likely competitive environment post-acquisition if the transaction proceeds (the "with" position) to the likely competitive environment post-acquisition if the transaction does not proceed (the "without" or "counterfactual" position) to determine whether the acquisition is likely to substantially lessen competition in any relevant market.
45. Based on the information available, the ACCC considers that without the proposed acquisition, Woolworths would still be likely to enter the hardware and home improvement sector by establishing a network of 'big box' retail stores, together with a wholesale network to supply these stores. There is no information currently available to suggest that Lowe's would have otherwise established operations in Australia.
46. On the basis of inquiries to date, the ACCC considers it likely that Danks would continue in its present form without the proposed acquisition, operating mainly as a wholesale supplier to independent hardware retailers.
47. Therefore, the key difference between the "with" and "without" competitive environments in this matter is that with the acquisition Woolworths would be a wholesale supplier to Danks member stores and some independent retailers, whereas without the proposed acquisition Woolworths would be supplying only its own stores at the wholesale level, while Danks would continue to supply the stores it currently supplies; in both the with and without scenarios Woolworths is likely to operate a network of retail stores.

### **Statement of issues**

48. For the purposes of a Statement of Issues, the ACCC may identify three categories of issues; 'issues of concern', 'issues that may raise concerns requiring further analysis' and 'issues unlikely to pose concerns'. In this matter, one issue raised below is categorised as an issue of concern, one as an issue that may raise concerns requiring further analysis, and one as being unlikely to pose concerns.

## Issue of concern

### *Reduced competition at the retail level due to a reduction in the number of participants at the wholesale level*

49. The ACCC is concerned that in some local markets the proposed acquisition may be likely to result in a reduction in the level of competition between retailers in some markets, particularly between Woolworths 'big box' stores and retailers supplied by Woolworths/Danks, compared with the likely competitive position in the absence of the proposed acquisition.
50. This concern arises because the acquisition reduces the number of participants at the wholesale level by one compared with the situation without the acquisition. *Without* the acquisition, Woolworths would enter as a vertically integrated 'big box' retailer with its own wholesale operation, increasing the number of significant participants at the wholesale level from three (Bunnings, Danks and Mitre 10) to four (with the addition of Woolworths). *With* the acquisition of Danks by Woolworths, the number of significant participants at the wholesale level does not increase, but stays at three (Bunnings, Mitre 10, and Woolworths).
51. Depending on conditions at the retail level, the lower number of competitors at the wholesale level may result in a lower level of competition at the retail level.
52. As noted in the Market Definition section of this paper, while vertically integrated wholesalers like Bunnings and the new Woolworths 'big box' operation do not compete to supply independent retailers, the prices charged by wholesalers like Danks and Mitre 10 to independent retailers are still constrained indirectly by the retail prices charged by Bunnings and Woolworths 'big box' stores. This is because Bunnings and Woolworths' 'big box' stores compete with the retailers who are customers of Danks and Mitre 10, and this flows through to put pressure on Danks and Mitre 10 to offer competitive prices in order to ensure that the retailers they supply do not lose sales to the vertically integrated retailers.
53. When compared to the situation 'without' the acquisition, Woolworths' dual role as wholesaler and retailer may provide incentives and opportunities for a reduced level of competition at the retail level, particularly in those local areas where Woolworths supplies an independent retailer in close proximity to one of its new 'big box' stores. It may also influence Woolworths' decisions about where to locate its 'big box' stores, resulting in a reduction in competition in local retail markets where these stores may otherwise have been located.
54. Without the acquisition, Woolworths, Danks and the independent retailers Danks supplies would each make their own decisions about how to compete, based solely on the aim of maximising their own profits. With the acquisition, Woolworths must consider not only its profits through its own vertically integrated 'big box' retail stores, but also its profits as a wholesaler to independent retailers.
55. For example, if there is vigorous competition in a local market where a Woolworths 'big box' competes with a Home Hardware store, any additional profits Woolworths' retail store earns may come partly at the expense of

reduced sales and profits at the Home Hardware store and therefore partly at the expense of Woolworths' wholesale operations. With the acquisition, in making any decision about how vigorously to compete at the retail level, it would be in Woolworths' interest to weigh up any possible increased 'big box' profits against the effect this might have in lowering its profits as a wholesaler to independent stores. In contrast, without the acquisition, Woolworths would not need to take into account any profits it might lose as a wholesaler to independents when deciding how to compete as a retailer.

56. Without the acquisition, Danks' incentive would be to support retailers it supplies in order to ensure that they are able to compete effectively, including against Woolworths, while the wholesale side of Woolworths' vertically integrated 'big box' operation would have the incentive of ensuring that its big boxes were able to compete effectively.
57. Vigorous and close competition between hardware and home improvement retailers may take many forms including discounted prices, promotions, expanded product range, extended opening hours, service offerings, delivery options, or decisions about whether to expand or build a new store. The ACCC is concerned that the incentive for such competition may be reduced post-acquisition.
58. The ACCC's preliminary view is that a retailer supplied by Danks and located near a Woolworths retail store may have less ability and incentive to vigorously compete with Woolworths, for example by undercutting the prices of the Woolworths retail store, if Woolworths is also its wholesale supplier. With Woolworths as their wholesale supplier, independents may be less likely to be offered special deals from their wholesaler designed to help them compete with or undercut a nearby Woolworths 'big box' operation. Further, even if independent retailers were able to obtain a consignment of goods direct from a manufacturer at a price that allowed them to undercut the Woolworths 'big box' store, they would face a risk of retaliation by Woolworths as their key wholesale supplier, which may dissuade them from doing so. This risk of retaliation by the wholesaler would not exist without the acquisition (since Danks is not also a retailer).
59. The level of competition from other retailers is critical to the ACCC's assessment of whether the lower number of wholesale market participants is likely to lessen competition at the retail level; in local markets where there are other strong competitors, Woolworths and the independent retailer may risk losing sales to those competitors unless they compete as vigorously as possible.

#### Comments from interested parties

60. The ACCC recognises there may be difficulties in providing comments in relation to specific local markets without knowledge of the location of Woolworths' 'big box' stores. Notwithstanding this, the ACCC is interested in any information interested parties can provide which may assist in assessing Woolworths' incentives to compete vigorously with its retail competitors (which are also its wholesale customers). More generally, the ACCC invites market participants to provide any information they have about the likelihood or otherwise of reduced competition at the retail level due to a reduction in the number of participants at the wholesale level.

## Issue that may raise concerns

### *Discrimination against wholesale customers who are also retail competitors*

61. The ACCC is concerned that the proposed acquisition may provide Woolworths with market power in wholesale markets for the supply of hardware and home improvement products such that it may have the ability and incentive to discriminate against some of its wholesale customers who are also its retail competitors. The ACCC is concerned that this may limit the ability of these stores to compete as effectively in local markets for the retail sale of various categories of hardware and home improvement products as they would have without the acquisition (that is, if Danks remained independent of Woolworths).
62. During the ACCC's market inquiries, some parties expressed concerns that post-acquisition, and particularly after the rollout of its 'big box' stores, Woolworths' position as a wholesaler and a retailer may give it the ability and incentive to discriminate against some or all of those retailers it supplies in favour of its own 'big box' stores. Concerns were also expressed about whether Woolworths would continue to have the incentive to support the old Danks wholesale business supplying retailers in the medium to longer term.
63. If Woolworths has both the ability and incentive to discriminate against or foreclose its wholesale customers, this may substantially lessen competition by impeding the ability of independent retailers to compete as effectively as they would have in the absence of the proposed acquisition, thereby denying consumers the benefits that this competition would bring.

### *Would Woolworths have the **ability** to discriminate against wholesale customers?*

64. The ACCC considers that Woolworths' position as a wholesale supplier may provide it with opportunities to discriminate against particular stores by imposing less favourable trading terms including by increasing prices, limiting or denying access to certain products, or reducing service levels.

### Alternative sources of wholesale supply for Danks stores and independent hardware retailers

65. An important factor in determining whether Woolworths would have the ability to foreclose or discriminate against wholesale customers is the availability or otherwise of closely competitive alternative sources of supply to which these retailers could switch if they were dissatisfied with Woolworths' wholesale supply terms.
66. If Danks' member stores and independent retailers could readily switch away from Woolworths to an alternative wholesale supplier, then Woolworths would have no ability to profitably engage in such behaviour, because if Woolworths increased its prices to wholesale customers, they would not be forced to increase their retail prices and lose sales to the Woolworths 'big box', but would instead simply switch to a new wholesaler. This would result in reduced wholesaling profits for Woolworths as it lost a wholesale customer, but no benefit to its 'big box' retail store since the independent store would be undamaged as a competitor. However, if Danks member stores and independent retailers have insufficient realistic alternative wholesale options, they would find it difficult to resist any attempt by Woolworths to engage in foreclosure or discrimination.

67. The ACCC has received conflicting views from market participants about the feasibility of Danks' members and independent customers switching to Mitre 10, the largest other hardware wholesaler, if they were dissatisfied with Woolworths' wholesale supply. Some market participants have suggested that Mitre 10's membership and supply terms are less attractive than those of Danks, while others have noted that there may be restrictions preventing Danks' members from switching. Restrictions on switching may include territorial restrictions which prevent or limit the ability of new Mitre 10 stores to set up in close proximity to existing stores, although it is noted that in areas where this issue arises, the existence of a Mitre 10 store is likely to provide some degree of competitive constraint in the retail market.
68. As to whether stores could obtain supply directly from suppliers and/or through wholesale buying groups if they were unhappy with Woolworths' wholesale supply, the ACCC's market inquiries have indicated that while many Danks wholesale customers currently source *some* products through these channels, these may not represent close substitutes to Danks as a wholesale supplier for the following reasons:
- other suppliers cannot offer the same efficiencies gained by aggregating supply of a broad range of products through one supplier;
  - the effect of minimum ordering requirements for each supplier, when accumulated across a number of suppliers or wholesale buying groups, results in significant financial and logistical burdens; and
  - the extensive range of products available through Danks cannot be viably replicated via alternative avenues of supply.
69. The height of barriers to new entry or expansion into wholesale supply is also relevant to the issue of whether sufficient alternative sources of supply are likely to be available to wholesale customers post-acquisition. If a new wholesaler could enter the market and supply retailers on terms that allowed them to compete strongly, or if retailers could establish their own buying group or credibly threaten to do so, it is unlikely that Woolworths could engage in foreclosure or discrimination strategies because wholesale customers would have sufficient viable supply alternatives.

*Would Woolworths have the **incentive** to discriminate against wholesale customers?*

70. Woolworths would have an incentive to discriminate against a store which is its wholesale customer (e.g. a Home Hardware store) only if this would increase its overall profits. In order for this to be the case, the additional profit earned by Woolworths' 'big box' retail store as a result of customers switching their purchases from the Home Hardware store to the Woolworths 'big box' store would need to outweigh the profits it would lose as a result of the reduction in its wholesale sales to the Home Hardware store.
71. Whether or not this is the case will depend on a number of factors, including the relative size of the profit margins Woolworths earns on retail versus wholesale sales, and the strength of competition Woolworths faces in the local market; if Woolworths raises its wholesale prices to a wholesale customer (e.g. a Home Hardware store) which in turn is forced to raise its retail prices and therefore loses some customers, Woolworths' 'big box' would hope to gain some of those

customers. However, if Woolworths faces a number of other strong competitors in the local retail market, it is likely that those competitors will gain a large share of the sales lost by the Home Hardware store in question. Accordingly, the stronger the competition that Woolworths faces in a local retail market, the less likely it is that such a foreclosure or discrimination strategy would be profitable for Woolworths.

*Would foreclosure or discrimination against wholesale customers constitute a substantial lessening of competition?*

72. The ACCC is concerned that if implemented, such foreclosure strategies may limit the ability of these stores to compete as effectively in local retail markets as they would have without the proposed acquisition. It may cause the closure of some stores or discourage new entrants to the market. This may in turn lessen competition in the relevant markets, disadvantaging consumers.

Comments from interested parties

73. While this issue has been raised as a concern, the ACCC is seeking further information from interested parties to support or refute the assertion that Woolworths is likely to have the incentive and ability to engage in this conduct post acquisition and the extent to which it would impact the level of competition. Specifically, interested parties are invited to provide information relating to the following:
- i. Whether there are viable, competitive alternative sources of wholesale supply to which Danks stores and other independent retailers could readily switch if they were dissatisfied with Woolworths' wholesale supply. Possible supply alternatives may include Mitre 10, purchasing direct from suppliers, specialist wholesalers, other wholesalers, wholesale buying groups (or any other avenues of supply).
  - ii. Could these alternative suppliers replicate the product and service offering currently offered by Danks or are there particular products or services currently supplied by Danks which are not available elsewhere?
  - iii. What is the nature and extent of barriers to new entry to hardware wholesaling?
  - iv. How likely is it that existing Danks stores could sponsor the entry of a new wholesaler or establish their own wholesale arrangements in the event that they could not find alternative sources of supply?
  - v. Is the proposed acquisition likely to increase or decrease the extent of any barriers to entry, or are they likely to stay the same?
  - vi. Are there particular local markets in which there is a lack of independently supplied retailers to which customers could turn in the event that Woolworths forecloses its retail competitor(s) in that market?

## **Issue unlikely to pose concerns**

### ***Conglomerate merger issues***

74. The ACCC considered whether Woolworths' presence in other markets (including groceries, liquor, petrol) would provide it with advantages which could be leveraged into the hardware and home improvement sector such that it would lead to a substantial lessening of competition in any of the relevant markets.
75. On the basis of the information available, the ACCC's preliminary view is that Woolworths' presence in other markets is unlikely to give it market power in any relevant market such that the proposed acquisition will result in a substantial lessening of competition.

### ***Further submissions and comments in relation to this issue***

76. Although the ACCC is of the preliminary view that this issue is unlikely to pose concerns, the ACCC will accept further submissions from market participants with regard to this issue and will further consider possible competition concerns if it considers that such an assessment is warranted.

## **ACCC's future steps**

77. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
78. 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.
79. Submissions are to be received by the ACCC no later than 23 October 2009. 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 as to the appropriate course of action to take to resolve any competition concerns that remain.
80. The ACCC intends to publicly announce its final view by 11 November 2009. 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.