



**10 February 2010** 

## **Statement of Issues**

- AMP Limited proposed acquisition of AXA Asia Pacific Holdings Limited
- National Australia Bank Limited proposed acquisition of AXA Asia Pacific 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 AXA Asia Pacific Holdings Limited's Australian businesses (AXA) by two separate and competing bidders: AMP Limited (AMP) and the National Australia Bank Limited (NAB) (proposed acquisitions).
- 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 <a href="www.accc.gov.au">www.accc.gov.au</a>) the ACCC has established secondary timelines for further consideration of the issues. The ACCC anticipates completing further market inquiries by 26 February 2010. The ACCC hopes to make final decisions on both proposed acquisitions by 17 March 2010. The ACCC notes that it received a submission from AMP on its proposed acquisition of AXA on 3 December 2009 and a submission from NAB on its proposed acquisition of AXA on 15 January 2010. Given the length of time the ACCC has had to review NAB's proposed acquisition, the ACCC notes that a final decision on NAB's proposed acquisition of AXA may take longer than its decision on AMP's proposed acquisition of AXA.
- 4. However, the anticipated timelines can change in line with the *Merger Review Process Guidelines*. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at <a href="www.accc.gov.au/mergersregister">www.accc.gov.au/mergersregister</a>.
- 5. 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 to date. It is also intended to

provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

## **Background**

- 6. Following receipt of AMP's submission on 3 December 2009, the ACCC commenced a review of AMP's proposed acquisition of AXA on 4 December 2009.
- 7. NAB provided a submission regarding its proposed acquisition of AXA on 15 January 2010. Following receipt of NAB's submission, the ACCC commenced a review of NAB's proposed acquisition of AXA on 19 January 2010.
- 8. The ACCC has conducted market inquiries on the proposed acquisitions. A range of industry participants were consulted regarding both proposed acquisitions.
- 9. Given that there are two bidders for AXA and the areas of overlap between the two proposed acquisitions are similar, the ACCC has decided to publish a Statement of Issues that identifies preliminary competition issues as they relate to each proposed acquisition.

## The parties

#### **AMP Limited**

- 10. AMP is a publicly listed wealth management company providing superannuation, managed investments, retirement income, insurance and banking products to investors. It also provides financial planning and advice services through AMP Financial Services, a business unit of AMP.
- 11. AMP provides financial advice and planning services through its network of aligned advisers which operate under the Australian Financial Services Licences (AFSL) of AMP Financial Planning or Hillross.
- 12. AMP supplies a number of retail investment platforms. It owns and operates the Flexible Lifetime master trust platform. AMP does not currently own or operate its own wrap platform but uses a badged version of the "Asgard" wrap platform supplied by Westpac and a badged version of the Macquarie Wrap.
- 13. AMP Capital Investors, a business unit of AMP, is a specialist investment manager which offers investment products across major asset classes including local and international shares, local and international fixed interest, property, infrastructure, diversified funds, multi-manager funds under the Future Directions Funds range, and alternative investments such as absolute return funds, structured products and private equity.

#### **National Australia Bank Limited**

14. NAB provides a full range of banking and financial products and services including retail, business and corporate banking products and services. NAB has a

- significant presence in the supply of personal and business banking products and services, including transaction accounts, deposit/term products, credit cards, home loans and personal loans, SME banking and agribusiness banking products.
- 15. NAB also provides wealth management products and services including superannuation, investments, retirement income, life insurance and financial planning and advice. NAB also supplies a number of retail investment platforms and stockbroking products and services.
- 16. NAB's wealth management businesses include NAB Wealth, nabInvest, MLC and Aviva Australia, which provide private banking, asset management, superannuation, insurance and financial advisory services. NAB has also recently acquired the JBWere stockbroking business.
- 17. NAB supplies retail investment platforms, including MLC MasterKey, MasterKey Custom, Plum and Navigator.
- 18. NAB provides financial advisory and planning services through a network of aligned financial planners, including NAB Financial Planning, MLC Financial Planning, Garvan Financial Planning, Godfrey Pembroke and Apogee Financial Planning. NAB also has relationships with non-aligned financial planners.

#### **AXA Asia Pacific Holdings Limited**

- 19. AXA is listed on the Australian Securities Exchange. AXA provides wealth management and financial protection products. It has operations in Hong Kong, China, Singapore, Indonesia, Philippines, Thailand, India, Malaysia, Australia and New Zealand.
- 20. AXA provides a range of wealth management products and services including superannuation, insurance, investments, financial planning and advice. Products offered by AXA are mainly sold through brands including AXA, ipac, Generations, Summit and North.
- 21. AXA provides direct asset management products and services through its joint venture interest in Alliance Bernstein Australia and New Zealand Limited.
- 22. AXA supplies retail investment platforms including Summit, Generations, iAccess and North. AXA's aligned financial planners operate through the AXA advisory network comprising AXA Financial Planning, Charter Financial Planning, Jigsaw Support services, and Gensys Wealth Advisors. AXA also owns two financial planning and advisory businesses: ipac securities and Tynan Mackenzie. AXA also has relationships with non-aligned financial advisers.

## **Industry background**

#### Wealth management

23. Wealth management includes the provision of investment or other products and services, including financial planning, funds and asset management services, life insurance, superannuation and retirement income products.

24. The wealth management chain is diagrammatically represented below.



- 25. Fund managers invest money in line with the goals of investors by purchasing securities in a variety of underlying asset classes including shares, property, fixed interest, cash, or other asset classes.
- 26. Funds under management may be sourced directly from retail customers; through platforms (via financial planners); or alternatively wholesale funds may be sourced from larger institutional clients, e.g. superannuation funds, insurance companies and multi-manager funds.
- 27. A retail investment platform is an administrative structure for investments and provides a central 'hub' account for a range of services, including 'menus' of products, capturing details of a client's portfolio and consolidated reporting.
- 28. Retail investment platforms are a central link in the chain between the retail investor and underlying investment products. Most retail investors access retail investment platforms through a financial planner.
- 29. The ACCC understands that approximately 80 per cent of investment flows are channelled by financial planers through retail investment platforms. The ACCC understands that there is very limited direct distribution of investment products to retail investors. The ACCC notes that direct distribution is largely limited to institutional investors.
- 30. The types of investment products supplied on retail investment platforms include managed funds, superannuation, life insurance, cash deposits, margin lending and term deposit products.
- 31. Providers of retail investment platforms receive a proportion of the overall annual management fees derived by an investment product provider, referred to as a rebate payment. This rebate payment is generally based upon a proportion of the amount of funds administered by the retail investment platform operator. Providers of retail investment platforms also charge fees to dealer groups and end investors to administer an investor's account.
- 32. Financial planners provide financial advice to clients based on the needs of the client and the products the financial planner is able to offer the client. Financial planning and advisory services vary in the complexity and depth of advice given. Some financial planners undertake detailed analysis of their client's overall financial situation and develop a comprehensive plan to meet their client's goals. Other financial planners may undertake less detailed analysis, or give advice confined to a particular issue.

- 33. Financial planners usually distribute a range of products including cash management accounts, managed investment funds, superannuation and life insurance products.
- 34. Product manufacturers (such as fund managers, life insurance providers or superannuation providers) may provide commissions to financial advisors when a product is recommended. Upon making an initial investment, the ACCC understands that financial advisors may charge a client an entry or contribution fee. Fees paid to some financial planners are fee for service rather than commissions.
- 35. The ACCC understands that there has been some move within the financial planning sector to move towards a fee-for-service model. The ACCC also notes the recommendations of the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Financial Products and Services.
- 36. Financial planners are generally considered as either 'aligned' or 'non-aligned' planners. 'Aligned' planners operate as authorised representatives of a financial entity that holds an AFSL, and can be either salaried employees or self-employed. Financial planners can operate under their own identity or may operate as part of a financial planner group (commonly known as dealer groups). In respect of the latter, the financial planner operates under the brand name of the dealer group.
- 37. 'Non-aligned' financial planners are not affiliated with an upstream product provider and may operate under their own AFSL or the licence of a dealer group.
- 38. In order for investment products to be recommended by a financial planner, the products must first be on the Approved Product Lists (**APLs**) of the financial dealer group. Generally, financial planner groups that are aligned with a product manufacturer tend to have an APL weighted towards the aligned manufacturer's products. In comparison, the ACCC understands that non-aligned financial advisers tend to provide a more expansive APL.

#### Participants in the wealth management industry

- 39. Wealth management providers are often vertically integrated, participating at multiple levels of the supply chain. Vertically integrated providers 'manufacture' the investment product (whether this be a managed fund, life insurance or superannuation product), provide retail investment platforms and have a network of affiliated financial advisers distributing their products.
- 40. Vertically integrated wealth management providers include AMP, AXA and the major banks: Commonwealth Bank of Australia; Westpac Banking Corporation, National Australia Bank and ANZ Banking Group.
- 41. Non-vertically integrated wealth management providers may operate at only one or two levels of the wealth management supply chain. The ACCC understands that these market participants may not have their own distribution capabilities and may rely on unrelated intermediaries (financial advisers and dealer groups) to provide their products to consumers. The ACCC understands these providers may offer their products to investors via retail investment platforms operated by

unrelated providers. The ACCC understands that non-vertically integrated players include Blackrock Investment Management, Legg Mason, Vanguard Investments, Zurich Financial Services Australia, IOOF/AWM, Macquarie Group, Mercer, and Suncorp.

#### With/without test

- 42. 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 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.
- 43. There are a number of possible counterfactuals which the ACCC is exploring in relation to its assessment of both proposed acquisitions. These counterfactuals include:
  - in the event that AMP does not acquire AXA, a likely counterfactual may be that NAB is likely to be the successful bidder for AXA;
  - in the event the NAB does not acquire AXA, a likely counterfactual may be that AMP is likely to be the successful bidder for AXA or
  - should the ACCC identify competition concerns with respect to either or both acquisitions, a likely counterfactual could be the status quo, with NAB, AMP and AXA remaining independent providers of wealth management services.
- 44. The ACCC seeks comments from interested parties on the most likely counterfactual(s) to be considered relevant to the ACCC's assessment of both acquisitions.

The ACCC invites market participants to comment on the likely competitive environment post acquisition if either proposed acquisition proceeds and the likely competitive environment if either acquisition does not proceed.

In particular, the ACCC is considering the issues which are outlined below and invites interested parties to comment on:

- Whether AMP is likely to remain an effective competitor in the relevant markets in the absence of it acquiring AXA;
- The likelihood of AMP becoming a takeover target if it does not acquire AXA;
- Whether AXA will continue to operate in its current form if neither proposed acquisition proceeds;
- The prospect of a merged AMP-AXA creating a 'fifth pillar', that is creating an increased competitive force to the four major banks, in the provision of wealth management and/or banking services.

## Areas of overlap and market definition

- 45. Each of the key areas in which the parties provide the same or similar products or services, or related or complementary products or services are discussed below.
- 46. The ACCC notes that market definition is not static and that the various wealth management and banking markets outlined below are constantly evolving. In particular, the ACCC considers that markets for attracting retail investment dollars are highly dynamic, driven by technological advances and the large growing pool of investment funds.

### Wealth management sector – relevant markets

- 47. The ACCC has considered whether a broad wealth management market should be defined, comprising the functional levels of manufacturing investment products (including funds and asset management services), supply of retail investment platform services and financial planning and advisory services.
- 48. While there are several large players in the wealth management sector which operate at each functional level, the ACCC notes that there are also several non-vertically integrated providers that operate at a single functional level. For instance there are several non-aligned third party providers of funds and asset management services (manufacturers of fund products) as well as a number of non-aligned dealer groups.

- 49. The ACCC's preliminary view is that the relevant markets in which to assess the proposed acquisitions are separate but related national markets for:
  - the supply of investment products available on retail investment platforms;
  - the supply of retail investment platform services to institutions, suppliers of investment products, non-aligned dealer groups and financial advisor businesses;
  - the supply of financial planning and advisory services;
  - the supply of superannuation and retirement income products, which includes retail, corporate, industry and self-managed super funds; and
  - the supply of life insurance, including individual and group risk products.

Supply of investment products available on retail platforms

50. The ACCC's preliminary view is that there is a separate market for investment products available on retail investment platforms. The ACCC's preliminary view is that financial planners and investors using a retail investment platform do not regard other forms of non-platform investment products (e.g. industry super funds, listed investment companies, exchange traded funds and equity markets) as sufficiently close substitutes to be included in the same market.

Supply of retail investment platform services

- 51. The ACCC's preliminary view is that providers of master trust and wrap platforms compete to attract funds from financial planners or dealer groups. Providers of master trust and wrap platforms also compete to attract investment products. Market inquiries suggest that master trust and wrap platforms are functionally similar, albeit with some differentiation (e.g. range of investments available on a particular retail investment platform). Given the functional similarities between the two different platform services the ACCC proposes to consider master trust and wrap platforms as being within the same market.
- 52. Market inquiries to date indicate that retail investment platforms provide a range of benefits that are not readily available to financial planners, dealer groups or investment product providers via other avenues for retail investment, such as direct investments. Market inquiries have also highlighted the capital intensive infrastructure required to establish retail investment platforms, complex technology, and continual investment in retail investment platform development.
- 53. In light of the above, the ACCC's preliminary view is that there is a national market for the supply of retail platform services to institutions, suppliers of investment products, non-aligned dealer groups and financial advisor businesses.

#### Financial planning and advisory services

- 54. The ACCC's preliminary view is that there is a separate market for financial planning and advisory services.
- 55. The ACCC considered the possibility that financial planning and advisory services fall within a broader market for wealth management services. However, the ACCC understands that many small, medium and even large financial planning and advisory businesses only participate at the financial planning and advisory level of the wealth management value chain. The ACCC's preliminary view is that while there is a degree of integration between different levels of the supply chain with financial planners, there is a very significant proportion of non-aligned financial planners which indicates that a separate market exists for financial planning and advisory services.
- 56. The ACCC's preliminary view is that the market for financial planning and advisory services comprises both aligned and non-aligned financial planners.

#### Superannuation and retirement income products

- 57. The ACCC's preliminary view is that there is a separate market for the supply of superannuation and retirement income products. This market includes retail superannuation funds, industry superannuation funds, self managed superannuation funds (SMSFs), and corporate superannuation funds. This preliminary view has been formed on the basis of responses to market inquiries and data demonstrating the transfer of funds between superannuation fund types, particularly among retail funds, industry funds and SMSFs.
- 58. The ACCC's preliminary view is that it is appropriate to consider retirement income products and superannuation products in the same market on the basis of supply-side substitutability. In particular, market inquiries to date indicate that suppliers of superannuation products tend to also supply retirement income products, and can readily switch between the development of each type of product. Further, the ACCC understands suppliers of retirement income products and superannuation products generally offer both types of products with similar features; i.e. the same investment options offered, prices and administration services.

#### Life insurance

- 59. The ACCC's preliminary view is that a national market exists for the supply of life insurance products, including individual and group risk products.
- 60. It appears to the ACCC that most life insurance companies offer products across a suite of life insurance categories, and even if the full suite of categories is not offered, a life insurance company may be able to readily supply other categories of life insurance. These product categories include death insurance, total permanent disablement insurance, trauma insurance, income protection insurance and group cover.

61. The ACCC invites market participants to comment on the proposed market definitions.

## **Banking sector – relevant markets**

62. The ACCC's preliminary views on the relevant markets which relate to the banking sector are outlined below. The definition of these markets has been made having regard to recent examination of other financial sector mergers.

## Personal banking

- 63. The ACCC's preliminary view is that the relevant markets for personal banking are markets for the supply of:
  - transaction accounts;
  - deposit/term products;
  - credit cards;
  - home loans;
  - personal loans; and
  - hybrid personal lending.

#### Business banking

- 64. The ACCC's preliminary view is that the relevant markets for business banking are markets for the supply of:
  - small to medium enterprises banking a product cluster including business lending, credit cards, transaction/cash facilities and banking advice;
  - equipment finance;
  - merchant acquiring services; and
  - agribusiness banking. In regards to this market, the ACCC notes that it can be broken up into narrower markets. However for present purposes it is not necessary to consider this.

#### Corporate banking

65. The ACCC considers that there are likely to be a range of corporate and institutional banking products offered to corporate banking customers, including: transaction services, commercial credit cards, loans and capital raisings, service and advice in areas including liquidity requirements, funding, interest rate management, capital transactions, debt/equity underwriting, foreign exchange markets and trade finance. The ACCC has not formed a definitive view as to whether these activities should be treated as separate markets, or part of a broader corporate and institutional banking market.

#### Statement of issues

- 66. Given that there are two bidders for AXA and the areas of overlap between the two proposed acquisitions are similar, the ACCC has combined the competition analysis for both proposed acquisitions, and noted key differences between the competition effects of each transaction where relevant.
- 67. For the purposes of this Statement of Issues, the issues in this matter are divided into two categories, 'issues that may raise concerns' and 'issues unlikely to pose concerns'.

#### Issues that may raise concerns

- 68. The ACCC notes industry commentary that retail investment platforms are regarded as the 'gate-keeper' of wealth management products and services. The ACCC considers that any competitive harm which may arise as a result of increased consolidation in the supply of retail investment platforms and financial planning and advisory services is likely to have effects in the other relevant markets identified (i.e. investment products provided on retail investment platforms, superannuation and life insurance). This is because retail investment platforms and financial planners using those platforms represent a significant distribution channel for these products.
- 69. As outlined above, the ACCC has defined separate (but related) markets consisting of three functional levels in the vertical supply chain for wealth management services. Given the interrelated links between each of these markets, the competition concerns outlined below may potentially overlap between these separate markets.
- 70. The ACCC considers that the issues that may raise concern (outlined below) are relevant to both proposed acquisitions.

#### Supply of retail investment platform services

71. The ACCC's preliminary view is that the proposed acquisitions may raise competition concerns in the national market for the supply of retail investment platform services to institutions, suppliers of investment products, non-aligned dealer groups and financial advisor businesses. It appears to the ACCC that NAB's proposed acquisition of AXA raises a higher level of concern then AMP's proposed acquisition of AXA.

#### Increased market concentration

- 72. The proposed acquisitions would result in increased concentration in the national market for the supply of retail investment platforms.
- 73. The ACCC notes that an acquisition of AXA by NAB will result in an increased level of concentration in respect of the wrap platform segment of the market. This is because NAB is an existing provider of wrap platforms, while AMP supplies badged versions of wrap platforms under 'white label' arrangements (i.e. AMP is not the platform administrator).

- 74. Based on a 'administrator view' of the share of funds under administration (FUA), which reflects the shares of the platform administrator and includes FUA which relate to badged platforms, a merged NAB-AXA would hold a market share of FUA ahead of Westpac. A merged AMP-AXA would hold an amount of FUA on its retail investment platforms slightly behind Westpac and NAB current market shares.
- 75. Based on a 'marketer view' of the share of FUA, which reflects the shares of the retail investment platform marketer and excludes FUA which relate to badged platforms, a merged NAB-AXA would hold twice the amount of FUA on its retail investment platforms to that of its closest competitors. A merged AMP-AXA would hold an amount of FUA on its retail investment platforms similar to NAB's current market share.
- 76. The ACCC considers that, as AMP does not own its own wrap platform, it is constrained in its ability to compete aggressively in the wrap platform segment of the market as it has no control over the investment in the underlying wrap platforms it supplies.
- 77. The ACCC considers that AMP is also constrained in its ability to target non-aligned financial planners as it is unlikely to be commercially attractive for non-aligned financial planners to sub-badge the wrap platforms AMP is currently supplied.
- 78. If AXA is acquired by NAB, this will reduce the number of substantial providers of underlying platform administrators. It appears that following an acquisition of AXA by NAB, AMP would be likely to remain a provider of badged wrap platforms as it would be unlikely to have sufficient scale to establish its own wrap platform.
- 79. If AXA is acquired by AMP, the number of substantial providers of underlying wrap platforms will remain the same. However, it appears likely that a merged AMP-AXA would have the requisite scale to justify additional investment in AXA's wrap platforms which may present an increased competitive constraint to existing wrap platform providers.

#### Barriers to entry and expansion

- 80. The ACCC considers that barriers to entry for the supply of retail investment platform services are high. Retail investment platforms require high capital costs, sophisticated technology and continued investment in IT systems and requisite minimum efficient scale to generate a reasonable return on investment.
- 81. Inquiries to date indicate that there are considerable barriers to entry and expansion to achieve the necessary scale required to provide a competitive threat to established providers of retail investment platforms. The ACCC considers that achieving sufficient scale in order to provide a constraint to established providers of retail investment platforms is likely to be difficult for new entrants.

- 82. Further, a new retail investment platform provider would need to achieve this scale based on new investment flows. Market inquiries indicated that it is costly for financial planners to switch clients' existing assets across retail investment platforms, because of the administrative burden and potential tax and regulatory issues.
- 83. The ACCC is concerned that the proposed acquisitions could raise barriers to entry and expansion for potential new entrant providers of retail investment platforms. The ACCC is investigating whether barriers will increase as a result of either proposed acquisitions. The ACCC notes that barriers to entry may be higher following an acquisition of AXA by NAB as post-acquisition, additional planners and share of FUA would be consolidated in the hands of a competitor that already has an established presence in the wrap platform segment of the market. This is because retail investment platforms are subject to network effects such that the more funds and investment products on its platforms, the more attractive the merged entity's platforms will become for customers post-acquisition.

Ability and incentive to increase retail investment platform administration fees and fees charged to suppliers of investment products

- 84. The ACCC is concerned that the proposed acquisitions may result in either merged entity having an ability and incentive to increase retail investment platform administration fees charged to institutions, non-aligned dealer groups or individual financial planners and possibly directly to end investors. The ACCC is also concerned that the proposed acquisitions may result in either merged entity having an ability and incentive to increase rebate payments paid by suppliers of investment products.
- 85. The ACCC's preliminary view is that barriers exist to financial planners switching to different dealer groups or to recommending to their clients to invest in a competing retail investment platform product in the event of being faced with increased retail investment platform fees by either merged entity. The ACCC notes that financial planners may more readily direct new investment flows to competing retail investment platforms.
- 86. The ACCC notes that dealer groups have differing approaches as to whether or not financial advisors 'own' the client relationship, which affects whether advisors can take their clients with them if they switch to another dealer group.
- 87. Market inquiries suggest that even if financial planners are legally free to take their clients with them, it can be difficult for financial planners to execute the transfer of client data across different administration software packages. Further, while some dealer groups operate an 'open architecture' and will support any platform used by the joining advisor, other dealer groups require joining advisors to use mandated platforms. If the platform used by the advisor's new dealer group does not support the advisor's client's current investments, the clients' investments would need to be changed which may have the following effects:
  - depending on the nature of existing investments, the client may incur capital gains tax;

- the financial advisor may need to generate a Statement of Advice for each client whose investments have changed, justifying the recommendation to change the investments; and/or
- the financial advisor would need to execute the transfers from the existing investments to the new investments.
- 88. Market inquiries also indicate that the financial advisor must also overcome the hurdle of convincing the client that changing platforms is necessary. Market inquiries have suggested there is a limited number of times a financial planner can switch dealer groups and retain credibility in the eyes of the client.
- 89. The ACCC is concerned that either merged entity through the increased concentration of FUA in the supply of retail investment platform services could also exercise its market power by being able to extract increased rebate payments from investment product providers. The ACCC notes that the ability of either merged entity to increase its share of rebate payments from investment product providers may be constrained by the ability of investment suppliers to seek an alternative retail investment platform service.
- 90. The ACCC notes that NAB's increase in market concentration in the supply of retail investment platform services (discussed at paragraphs 72 79), compared to AMP, may provide it with an increased incentive and ability to increase retail investment platform administration fees, or seek increased rebate payments from investment product providers.

The ACCC invites market participants to comment on raised barriers to entry and expansion, the ability and incentive to increase retail investment platform administration fees and/or the ability to increase fees to suppliers of investment products

In particular, the ACCC is considering the issues which are outlined below and invites interested parties to comment on:

- The extent to which AXA currently constrains providers of other retail investment platform services from increasing platform administration fees or fees charged to suppliers of investment products;
- The extent to which either merged entity is likely to raise barriers to entry;
- The extent to which either merged entity is likely to increase retail investment platform administration fees or demand larger rebates from suppliers of investment products;
- The appropriate basis on which to measure the increased share of FUA which results from the proposed acquisitions, being either the 'marketer view' of FUA or the 'administrator view' of FUA:
- The constraints which exist to prevent either merged entity from increasing retail investment platform administration fees or fees charged to suppliers of investment products;
- The extent to which institutions, non-aligned dealer groups and individual financial planners are likely to switch to alternative retail investment platforms in response to increased administration fees;
- The prospect of a merged AMP-AXA providing an increased competitive constraint upon the existing providers of retail investment platforms;
- The extent to which AMP is likely to be at a competitive disadvantage in the foreseeable future as a result of either a lack of scale on its retail investment platforms or because it does not own its wrap platforms;
- Whether AMP currently has, or is likely to accrue over time, sufficient scale on its retail investment platforms to justify investment in wrap platforms.

#### Supply of investment products available on retail platforms

91. The ACCC's preliminary view is that the proposed acquisitions may raise competition concerns in the national market for the supply of investment products available on retail investment platforms.

Potential foreclosure of third party providers of investment products

- 92. The ACCC is concerned that either acquisition may increase the ability and incentive of the merged entity to engage in foreclosure strategies in its dealings with third party providers of investment products to the merged entity's retail investment platforms.
- 93. Market participants have raised concerns that the proposed acquisitions may increase the ability of the merged entity to engage in foreclosure strategies in its dealings with third party providers of investment products, particularly those which are not vertically integrated.
- 94. Further, market participants have also expressed concern that the increased concentration that either merged entity will gain through its increased number of aligned financial planners will result in reduced choice for investors. This is because NAB or AMP products and services (which include fund management, superannuation, retail investment platforms, life insurance products and services) will dominate the APLs of either merged entity.
- 95. The ACCC is investigating the ability of either merged entity to limit or deny access to third party providers of investment products seeking to distribute those products on its platforms. The ACCC considers that foreclosure of third party providers of investment products may occur either as a result of:
  - the removal of certain third party products from the APLs of the merged entity's aligned financial planning groups; and/or
  - any pricing power which may accrue to the relevant merged entity, such that it can successfully demand increased rebate payments from investment product providers.
- 96. The ACCC's preliminary view is that any potential for foreclosure is more likely to arise as a result of increased margin squeeze pressure on third party product providers which may hinder their ability to compete with in-house investment products supplied by either merged entity. The ACCC understands that smaller boutique providers of investment products may be particularly vulnerable in this respect.
- 97. The ACCC recognises the ability and incentive for vertically-integrated retail platform providers to discriminate against third party investment product providers is limited by the ability for third party providers to seek alternative retail investment platforms to distribute their products and the consequent effect that may have on the flow of funds to the retail investment platform itself.

- 98. The ACCC is investigating the increased concentration of financial planners which will be aligned to either merged entity and the consequent share of funds which would flow through the merged entity's retail investment platforms and the likely impact this would have upon the ability of alternative retail investment platforms to source fund inflows.
- 99. The ACCC notes that the increase in market concentration which will result from a merged NAB-AXA (discussed at 72 79) in the supply of retail investment platform services, compared to AMP, may provide it with an increased ability and incentive to foreclose on third party providers of investment products.

# The ACCC invites market participants to comment on the potential for foreclosure of third party providers of investment products

In particular, the ACCC is considering the issues which are outlined below and invites interested parties to comment on:

- The extent to which either merged entity is likely to have the ability and incentive to remove a proportion of third party investment products from its APLs;
- The prospect that a merged NAB-AXA is likely to have a greater ability and incentive to engage in foreclosure of third party providers of investment products as compared with a merged AMP-AXA, as a result of a merged NAB-AXA having an increased share of FUA (based on a marketer view) relative to its closest competitors;
- Whether any increased pressure placed by either merged entity on the margins of third party providers of investment products is likely to substantially hinder the ability of third party providers of investment products to compete;
- The likelihood that either of the merged entity's in-house investment products would obtain a sustainable advantage over third party investment products as a result of either merged entity engaging in foreclosure strategies;
- The extent to which either merged entity is likely to have the ability and incentive
  to limit its distribution channel to only its aligned planners in order to favour
  inflows to in-house products;
- Whether any limitations placed on the APLs of its aligned planners by either merged entity is likely to substantially hinder the ability of third party providers of investment products to compete.

## Supply of financial planning and advisory services

100. The ACCC's preliminary view is that the proposed acquisitions may raise competition concerns in the market for the supply of financial planning and advisory services. The ACCC is seeking further information on whether either merged entity will have the ability and incentive to raise fees for advice charged

- to investors obtaining financial planning and advisory services from its aligned planners or reduce choice of products offered to investors.
- 101. The ACCC notes that both proposed acquisitions will result in similar increases in the concentration of financial planners. Either merged entity would become the market leader in terms of number of aligned financial planners.
- 102. While there may be a number of alternative financial planners which consumers could switch to in the event either merged entity increased the price of its advice fees, the ACCC notes that there are barriers to consumers switching dealer groups for financial planners.
- 103. In particular, the ACCC notes that switching to a different financial adviser group would also involve investors switching the investment products in which they have invested. As discussed at paragraphs 85 88, the ACCC considers that there are barriers to individual investors switching to different retail investment platform providers.
- 104. The ACCC's preliminary view is that consumers could not bypass any increased fees or reduced product choice imposed by the merged entity's aligned financial planners by directly obtaining wealth management products from product manufacturers. This is largely due to the complexity of wealth management products and that institutional investors rather than individual investors are the type of customers who are likely to approach product manufacturers directly.

# The ACCC invites market participants to comment on consolidation in financial planning and advisory services

In particular, the ACCC is considering the issues which are outlined below and invites interested parties to comment on:

- The extent to which either merged entity is likely to be constrained in its dealings with customers, including with respect to the setting of adviser fees, as a result of having an aligned financial planner distribution channel approximately twice the size of its next largest competitor;
- The constraints which exist to prevent either merged entity reducing the availability of third party products on its APLs or increasing adviser fees paid by investors;
- Whether either merged entity is likely to be constrained by financial planners which are affiliated with other product manufacturers and non-aligned financial planners.
- The extent to which investors are likely to switch between financial planners or between dealer groups in response to increased advisory fees.

#### Potential foreclosure effects on regional banks

105. Concerns have been raised with the ACCC that either proposed acquisition may affect the ability of regional banks to compete in banking and/or wealth management markets.

- 106. In particular, the ACCC is investigating whether the proposed acquisitions may:
  - affect the ability of regional banks to offer a complete suite of products in banking and wealth management; and/or
  - give either merged entity the ability and incentive to foreclose channels of distribution for the banking products of regional banks.

Ability of regional banks to offer a complete suite of products

- 107. In respect of point (a) above, the ACCC's preliminary view is that regional banks do not generally have sufficient scale to provide in-house wealth management and insurance products, and usually seek to partner with non-bank providers of these products.
- 108. The ACCC is investigating whether an acquisition of AXA will reduce the number of third party providers of wealth management products able to offer outsourcing services to regional banks. In this regard, market participants have raised concerns that regional banks will have a reduced ability to offer a full suite of products, making them less competitive in banking markets overall.

Potential to foreclose distribution channels for regional banks

- 109. In respect of point (b) above, the ACCC is also investigating whether either merged entity would have the ability and incentive to foreclose channels of distribution, namely retail investment platforms and financial planning networks, for the banking products of regional banks. The ACCC is investigating the potential for foreclosure of these distribution channels to regional banks and whether this would particularly affect the regional banks' ability to distribute term deposits, cash management accounts and margin lending services.
- 110. The ACCC notes that NAB's significant presence in banking markets, compared to AMP, is likely to provide it with a greater incentive to engage in foreclosure of distribution channels to regional banks.

The ACCC invites market participants to comment on the potential impact of either proposed acquisition on regional banks as outlined above.

In particular, the ACCC is considering the issues which are outlined below and invites interested parties to comment on:

The extent to which the proposed acquisitions are likely to impact on the ability of regional banks to access out-sourcing of wealth management and insurance products. In particular, to what extent are each of AXA, AMP and NAB currently providing such products to banking entities, what other sources are available and will these alternative sources provide sufficient competitive options in the event of either merger;

- The extent to which a banking business needs to offer wealth management and insurance products to remain competitive in banking markets;
- The extent to which either merged entity is likely to have the ability and incentive to foreclose channels of distribution for the banking products of regional banks.
- The extent to which regional banks rely on retail investment platforms and financial planning networks for distribution of their banking products.

### Coordinated effects

- 111. Mergers have coordinated effects when they assist firms in the relevant markets in explicitly or implicitly coordinating their pricing, output or related commercial decisions. This may result in a substantial lessening of competition in a number of ways, including resulting in an increase in the prices of the relevant goods or services.
- 112. Market inquiries have raised concerns that NAB's proposed acquisition of AXA may increase the incentive and ability of the merged entity to engage in coordinated conduct in the relevant markets identified. These concerns stem from the increasing concentration in the wealth management sector, and in particular the increased share of the major banks.
- 113. The significant presence of the major banks in wealth management and banking may increase the risk of co-ordinated conduct in both sectors. A merged NAB-AXA would need to take into account not only the reaction of competitors within the wealth management market, but also competitor reactions in other markets such as banking.
- 114. In contrast, a competitor which operates in fewer markets may not be as concerned with the reactions of participants in unrelated markets and hence may be more likely to pursue market share by competing aggressively.
- 115. The ACCC has not formed a view on whether either proposed acquisition will increase the potential for the merged entity to engage in coordinated conduct in any of the relevant markets. The ACCC seeks comment from market participants on whether NAB's proposed acquisition of AXA or AMP's proposed acquisition of AXA will give rise to coordinated conduct.

The ACCC invites market participants to comment on possible coordinated effects of NAB's proposed acquisition of AXA and AMP's proposed acquisition of AXA.

In particular, the ACCC is considering the issues which are outlined below and invites interested parties to comment on:

 The extent to which NAB's proposed acquisition of AXA is likely to increase the risk of coordinated conduct, as compared to AMP's proposed acquisition of AXA;

- The prospect that a non-bank financial institution will have a greater incentive to pursue market share in wealth management services than the major banks which interact across a large number of markets;
- Whether price signalling is likely to occur in the relevant wealth management and banking markets and if so, the existence of price leaders in the relevant markets;
- The extent to which either of the proposed acquisitions is likely to significantly increase the potential for coordinated conduct in the relevant wealth management and banking markets through market sharing arrangements.

## Conglomerate effects

- 116. Conglomerate mergers are mergers between firms that interact across several separate markets and supply products that are typically in some way related to each other, such as products that are in neighbouring markets or products that are complementary in either demand or supply.
- 117. Conglomerate mergers may raise concerns where the merged entity alters its operations or product offerings in a way that forecloses the merged entity's rivals and ultimately reduces the competitive constraint they provide in related or independent markets. For example, the merged entity's rivals may be foreclosed if the merged entity chooses to bundle or tie complementary products, such that:
  - no product can be purchased or used separately;
  - at least one product cannot be purchased or used separately; or
  - customers receive additional benefits when they purchase or use the merged entity's products together (e.g. due to discounts, rebates or design features).
- 118. Market inquiries have not raised conglomerate issues with respect to AMP's proposed acquisition of AXA. However, market inquiries have raised concerns that NAB's proposed acquisition of AXA may raise conglomerate issues.
- 119. The ACCC has not formed a view on whether NAB's proposed acquisition of AXA raises conglomerate issues and seeks further information from market participants.

# The ACCC invites market participants to comment on possible conglomerate effects of NAB's proposed merger of AXA.

In particular, the ACCC is considering the issues which are outlined below and invites interested parties to comment on:

 The extent to which a merged NAB-AXA is likely to have the ability or incentive to use funds/revenue from its wealth management business to cross subsidise its retail banking business;

- Whether a merged NAB-AXA is likely to have any greater ability or incentive to bundle retail banking products with wealth management products and if so, whether it is likely to achieve any sustainable competitive advantage from doing so;
- The extent to which customers seek out financial services and advice from dedicated financial services outlets rather than through bank branches;
- The extent to which financial services customers generally require/seek out both banking and wealth management products from the same provider.

#### **Issues unlikely to pose concerns**

#### **Superannuation**

- 120. NAB, AMP and AXA each supply of retail superannuation products, which includes personal superannuation products and employer-sponsored superannuation products.
- 121. The ACCC's preliminary view is that neither proposed acquisition is likely to raise horizontal competition concerns in the market for the supply of superannuation and retirement income products. The ACCC notes that with either merger, the market for superannuation and retirement income products will remain largely unconcentrated.
- 122. The ACCC's preliminary view is that there are alternative superannuation funds that would constrain both merged entities post-acquisition. Alternative superannuation funds include those provided by CBA/Colonial Group; ANZ; Mercer, Westpac/St George/BT, Suncorp Group, Sunsuper and IOOF.
- 123. Nevertheless, while the ACCC's preliminary view is that the combination of either NAB or AMP's superannuation business with AXA is unlikely of itself to raise significant competition issues, as discussed previously (see paragraphs 92 99), the ACCC notes that foreclosure issues may arise in relation to superannuation and retirement income products to the extent that these products are distributed via retail investment platforms.
- 124. The ACCC welcomes comments regarding its preliminary findings in this market and directs interested parties to the areas for comment in relation to potential foreclosure issues (see above: "The ACCC invites market participants to comment on the potential for foreclosure of third party providers of investment products").

#### Life Insurance

125. AMP, AXA and NAB overlap in the provision of life insurance products to individuals and groups of individuals.

- 126. The ACCC's preliminary view is that if NAB acquires AXA, NAB-AXA will be the clear market leader in the life insurance market and would result in NAB having close to double the market share of its nearest competitor. If AMP acquires AXA, AMP would also hold a market leading position, albeit with a lower market share that would be closer to that of other players in the life insurance market.
- 127. Market inquiries suggest that, with either acquisition, there will continue to be competition for the supply of life insurance products in a market which is innovative and constantly developing new product ranges.
- 128. The ACCC's preliminary view is that, either merged entity is likely to be constrained by existing competitors, including AIA Australia, ANZ, Commonwealth Bank, Tower, Westpac, and Suncorp, all of which supply the different types of life insurance products. The ACCC's preliminary view is that the life insurance market is a growth area which is attractive for competitors and new entrants to invest in and expand.
- 129. However, the ACCC's preliminary view is that a more competitive life insurance market structure is likely to result from a merged AMP-AXA, based on three players holding similar market shares, as compared with a merged NAB-AXA, which would result in NAB having close to double the share of its nearest competitor.
- 130. Nevertheless, while the ACCC's preliminary view is that the combination of either NAB or AMP's life insurance business with AXA is unlikely of itself to raise significant competition issues, as discussed previously (see paragraphs 92 99), the ACCC notes that foreclosure issues may arise in relation to life insurance to the extent that these products are distributed via retail investment platforms.
- 131. The ACCC welcomes comments regarding its preliminary findings in this market and directs interested parties to the areas for comment in relation to potential foreclosure issues (see above: "The ACCC invites market participants to comment on the potential for foreclosure of third party providers of investment products").

## **ACCC's future steps**

- 132. The ACCC will finalise its view on these matters after it considers market responses invited by this Statement of Issues.
- 133. 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.
- 134. The ACCC requests submissions by no later than **26 February 2010**. The ACCC will consider the submissions received from the market and the merger parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view in light of the issues raised above.

- 135. The ACCC hopes to make final decisions on both proposed acquisitions by 17 March 2010. The ACCC notes that it received a submission from AMP on its proposed acquisition of AXA on 3 December 2009 and a submission from NAB on its proposed acquisition on 15 January 2010. Given the length of time the ACCC has had to review NAB's proposed acquisition the ACCC notes that a final decision on NAB's proposed acquisition of AXA may take longer than its decision on AMP's proposed acquisition of AXA.
- 136. A Public Competition Assessment for the purpose of explaining the ACCC's final view will be published following the ACCC's public announcement.