Public Competition Assessment

25 October 2013

Woolworths Limited - proposed acquisition of supermarket site at Glenmore Ridge Village Centre

Introduction

1. On 6 June 2013, the Australian Competition and Consumer Commission (ACCC) announced its decision to oppose the proposed acquisition of a supermarket site at Glenmore Ridge Village Centre (the target site) by Woolworths Limited (Woolworths) from a subsidiary of Stockland Corporation Limited (Stockland) (the proposed acquisition). The ACCC decided that the proposed acquisition would be likely to have the effect of substantially lessening competition in the local retail supermarket market surrounding the target site, in contravention of section 50 of the Competition and Consumer Act 2010 (the Act).

2. The ACCC made its decision on the basis of the information provided by the parties to the acquisition (the parties) and information arising from its market inquiries. This Public Competition Assessment outlines (subject to confidentiality considerations) the basis on which the ACCC has reached its decision on the proposed acquisition.

Public Competition Assessment

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
   - an acquisition is opposed;
   - an acquisition is subject to enforceable undertakings;
   - the parties to the acquisition seek such disclosure; or
   - an acquisition is not opposed but raises important issues that the ACCC considers should be made public.

4. This Public Competition Assessment has been issued because the proposed acquisition was opposed by the ACCC.

5. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues.
6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC’s view in respect of other transaction proposals, as each matter will be considered on a case-by-case basis.

7. Public Competition Assessments outline the ACCC’s principal reasons for forming views on a proposed acquisition at the time the decision was made. As such Public Competition Assessments may not definitively identify and explain all issues that the ACCC considers arise from a proposed acquisition. Further, the ACCC’s decisions generally involve consideration of both non-confidential and confidential information provided by the parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources.

The parties

The acquirer: Woolworths Limited

8. Woolworths is an Australian and New Zealand retailer. Its operations include supermarkets, fuel, liquor, general merchandise stores, hardware and home improvement.

9. Woolworths is Australia’s largest grocery retailer. It operates over 800 supermarkets across Australia.

The vendor: Stockland Corporation Limited

10. The target site is currently owned by Stockland. Stockland is a publicly listed diversified property group. It develops and manages a portfolio of residential community, retirement living, retail, office and industrial assets.

The target: supermarket site at Glenmore Ridge Village Centre

11. The target site is a 2.1ha block of undeveloped land located approximately 53km west of the Sydney CBD in the recently released Glenmore Ridge residential estate. The Glenmore Ridge estate is in the suburb of Glenmore Park, within the Penrith City municipality. The target site is presently zoned as a ‘Local Centre’. As a result, subject to council and regulatory approvals, the site can house a supermarket, as well as complementary specialty shops such as a bottleshop, bank or post office.

The proposed transaction

12. Woolworths proposed to acquire the target site from Stockland.

Other supermarket operators

Coles

13. Coles is a large supermarket, liquor and fuel retailer. It operates over 700 supermarkets across Australia, and retails fuel under the Coles Express brand. Coles is owned by Wesfarmers Limited, an Australian listed public company with diverse business operations in the retail, resources, insurance, chemicals, energy, fertilisers and industrial sectors.
Metcash Limited

14. Metcash Limited (Metcash) is Australia’s largest grocery, fresh produce, liquor and hardware wholesaler and distributor to independently owned supermarkets. Metcash’s IGA Distribution business provides warehousing, distribution and marketing of grocery consumables to independent retailers operating under the IGA, Supa IGA and IGA Xpress supermarket brands and to supermarkets which do not carry the IGA brand such as FoodWorks, Supabarn, SupaExpress and Supabarn Express. There are over 1400 stores across Australia operating under one of the IGA brands (including supermarkets previously branded Franklins). Metcash is also a wholesaler to bottleshops under banner groups including IGA Liquor, Cellarbrations, Thirsty Camel and the Bottle-O, and to hardware retailers under the Mitre 10 and True Value banners.

ALDI Australia

15. ALDI is a privately-owned global supermarket operator that entered Australia in 2001. It has over 300 stores across NSW, the ACT, Queensland and Victoria. In February 2013, ALDI announced plans to expand its operations into South Australia and Western Australia.

16. ALDI can be characterised as a limited assortment discounter. Limited assortment discounters emphasise private label products, do not provide the same depth of range as full-line supermarkets (such as Woolworths and Coles) and are generally smaller stores. Various brands of limited assortment discounters operate internationally but in Australia ALDI is the only such operator with a significant interstate network.

Review timeline

17. The ACCC commenced its public review after being alerted to the proposed acquisition by a third party. The merger parties did not approach the ACCC to seek informal clearance.

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

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>06-Jul-2012</td>
<td>Closing date for submissions from interested parties.</td>
</tr>
<tr>
<td>12-Jul-2012</td>
<td>ACCC requested further information from the merger parties. Former proposed decision date of 2 August 2012 delayed. ACCC timeline suspended pending receipt of further information from the merger parties.</td>
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<tr>
<td>16-Aug-2012</td>
<td>ACCC received further information from the merger parties following ACCC’s request for information on 12 July 2012. ACCC timeline recommenced.</td>
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<tr>
<td>24-Aug-2012</td>
<td>ACCC timeline suspended because of delays in merger parties responding to additional information requests made previously by the ACCC. Proposed decision date of 6 September 2012 delayed.</td>
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<tr>
<td>03-Sep-2012</td>
<td>ACCC received further information from merger parties. ACCC timeline recommenced.</td>
</tr>
<tr>
<td>20-Sep-2012</td>
<td>ACCC published a Statement of Issues outlining preliminary competition concerns.</td>
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<td>Date</td>
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<tr>
<td>04-Oct-2012</td>
<td>Closing date for submissions relating to Statement of Issues.</td>
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<tr>
<td>11-Oct-2012</td>
<td>Awaiting response from merger parties to the Statement of Issues. Request received from Woolworths and Stockland that the ACCC delay its decision date to allow them further time to provide a response. Proposed decision date of 18 October 2012 delayed.</td>
</tr>
<tr>
<td>22-Oct-2012</td>
<td>Responses to the Statement of Issues received from merger parties. ACCC timeline recommenced.</td>
</tr>
<tr>
<td>06-Nov-2012</td>
<td>ACCC timeline suspended upon request from Woolworths that the ACCC delay its decision date again to allow it further time to provide additional information. Proposed decision date of 8 November 2012 delayed.</td>
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<tr>
<td>19-Nov-2012</td>
<td>ACCC received further information from Woolworths.</td>
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<tr>
<td>20-Nov-2012</td>
<td>ACCC notified Woolworths that the information provided on 19 November 2012 was incomplete and requested further information from Woolworths in support.</td>
</tr>
<tr>
<td>27-Nov-2012</td>
<td>Proposed decision date of 29 November 2012 delayed pending receipt of complete information from Woolworths supporting the information provided by Woolworths on 19 November 2012.</td>
</tr>
<tr>
<td>22-May-2013</td>
<td>Complete information received. ACCC timeline recommenced.</td>
</tr>
<tr>
<td>06-Jun-2013</td>
<td>ACCC announced it would oppose the proposed acquisition.</td>
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**Market inquiries**

19. The ACCC conducted market inquiries before and after it published a Statement of Issues, consulting a range of interested parties, including competitors, potential competitors and local customers.

**Statement of Issues**

20. The ACCC published a Statement of Issues on 20 September 2012. In the Statement of Issues the ACCC stated its preliminary view that the proposed acquisition would be likely to result in a substantial lessening of competition in the local retail supermarket market surrounding the target site. In particular, the ACCC expressed concern that the proposed acquisition would be likely to have the effect of preventing or hindering the emergence of competition that may otherwise have been brought to the local market by an alternative supermarket operator.

21. Further submissions were sought from industry participants and other interested parties in relation to the competition issues outlined in the ACCC’s Statement of Issues.

**Future with and without the acquisition**

22. Section 50 of the Act prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the “with” position) to the likely future competitive environment if the acquisition does not proceed (the...
“without” position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.

23. Most mergers reviewed by the ACCC involve the acquisition of a pre-existing business. In these circumstances the likely future state of competition without the merger will generally be similar to the state of competition prevailing at the time of the merger. In contrast, as this matter involves the proposed acquisition of a “greenfield” site, the competition prevailing at the time of the merger is likely to understate the future state of competition in the event that the proposed acquisition does not proceed.

24. The “with” position was that Woolworths’ acquisition of the target site would have proceeded. Woolworths would then have developed a large format full-line supermarket at the site (subject to council approval) and potentially also a Woolworths branded bottleshop. Complementary non-Woolworths specialty shops would also be likely to be developed at the site.

25. The ACCC concluded that, in the absence of the proposed acquisition, the most likely outcome was that another supermarket would be developed at the target site. In reaching this conclusion, the ACCC had regard to relevant local planning documents, as well as information provided by the merger parties and respondents to market inquiries.

26. Development of the target site is subject to certain local planning documents, including:

- the Penrith Local Environmental Plan (Glenmore Park Stage 2) 2009 (the LEP);
- section 6.18 of the Penrith Development Control Plan 2006; and
- the Glenmore Ridge Concept Plan submitted by Stockland to the Penrith City Council (and approved by the Council in February 2011) in respect of the target site.

27. Under the LEP, the target site is zoned as ‘B2 - Local Centre’, which permits the establishment of a supermarket at the site (as well as other complementary specialty shops) with the consent of Penrith City Council. Further, the LEP, and the other documents referred to above, each recognise the importance of the target site being used to provide retail facilities for the local community. The ACCC’s market inquiries suggested that a supermarket anchor would be essential to the successful establishment of a retail centre at the target site.

28. The ACCC also considered whether it would be open to Stockland to seek to have the site rezoned for residential development. However, given the emphasis on retail in the existing planning documents, the ACCC concluded the most likely outcome in the future without the proposed acquisition would be that a retail centre would be developed at the site.

**Competition analysis**

29. The ACCC considered whether the proposed acquisition was likely to lead to a substantial lessening of competition by preventing an alternative supermarket operator from competing with Woolworths in the local market surrounding the target site.
Market definition

Local retail supermarket market

30. When assessing local retail markets, the ACCC aims to identify the competitive constraints on the retail offers of the target store and other nearby stores operated by the acquiring firm. In the context of the present review, the 'target store' is the supermarket that would be developed at the target site.

31. For the reasons discussed below the ACCC considered the relevant market to be the retail supply of grocery and household products by supermarkets to consumers (the retail supermarket market) in the suburb of Glenmore Park.

Local retail supermarket market: product dimension

32. The ACCC considered the extent to which the following types of supermarket and non-supermarket retailers are substitutes for a supermarket constructed at the target site, and therefore whether they should be considered part of the relevant market:

- full-line supermarkets, such as those typical of the major supermarket chains, which retail a full range of goods including packaged groceries, fresh meat, bakery and deli products, fresh fruit and vegetables, and frozen foods.
- limited assortment discounters (i.e. ALDI); and
- specialist food retailers such as butchers, bakers and greengrocers.

33. Supermarkets offer customers the ability to purchase grocery items across multiple categories in one transaction. In this regard, they can be distinguished from specialist retailers. The ACCC did not consider specialist retailers to be sufficiently close substitutes to be included in the relevant market.

34. Further, not all supermarkets are equally close substitutes for each other. The ACCC considered that the closest constraint on a supermarket at the target site would be likely to come from other full-line supermarkets. While the ACCC considered ALDI to provide some competitive tension, it generally does not provide the same depth of range as a full-line supermarket.

35. For these reasons, the ACCC considered the product dimension of the relevant market to be the retail supermarket market.

Local retail supermarket market: geographic dimension

36. As stated above, the ACCC considered the geographic dimension of the market to be the suburb of Glenmore Park. The location of the target site in relation to the suburb of Glenmore Park is shown on the following map.
As shown in Figure 1, Glenmore Park is bounded to the north by the M4 Western Motorway (a major highway for which there are only two crossing points in Glenmore Park), to the east by the Northern Rd, to the west by the Nepean River and to the south by rural land and nature reserves. As a result, potentially competing supermarkets outside of Glenmore Park are located on the other side of the M4 Western Motorway.

As also shown in Figure 1, the suburb of Glenmore Park currently contains only one supermarket – a Woolworths at the Glenmore Park Town Centre. In the future, it will also contain an ALDI that the ACCC understands is due to open at the Glenmore Park Town Centre in 2014, and a supermarket at the target site.

Located approximately 1km north of the M4 (5-10 minutes’ drive from Glenmore Park, depending on traffic and starting location), the Woolworths supermarket at the Southlands Shopping Centre in the suburb of South Penrith is the next closest supermarket to Glenmore Park.

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1 As noted earlier in this document, the ACCC considers that this supermarket would be a Woolworths if the proposed acquisition proceeded, and was likely to be a non-Woolworths supermarket in the absence of the proposed acquisition.
40. Further north, there are a number of supermarkets in the suburb of Penrith (10-15 minutes' drive from Glenmore Park, depending on traffic and starting location). Penrith is the regional centre of the area. During the ACCC’s review, Penrith contained:

- a Woolworths in the Westfield Penrith complex (which is a major regional shopping centre);
- a Coles in the Centro Nepean complex (which is a sub-regional shopping centre);
- two Franklins supermarkets (one of which was in the Westfield Penrith complex);²
- one ALDI; and
- a Foodworks.

41. The ACCC concluded that the three existing and proposed supermarkets located in the suburb of Glenmore Park (and listed above at [38]) would be the closest constraints on each other due to their geographic proximity (noting the differentiation of retail offerings between ALDI and Woolworths).

42. The ACCC further concluded that neither the Woolworths at Southlands Shopping Centre, nor the supermarkets within Penrith, were sufficiently close substitutes to be considered part of the geographic dimension of the market.

43. In reaching these conclusions, the ACCC had regard to the following factors, each of which is discussed in greater detail below:

- the proximity of various supermarkets to the target site and local geographic features;
- the catchment area of supermarkets located in Glenmore Park; and
- the current shopping patterns of Glenmore Park residents.

Proximity and local geography

44. Each supermarket in Penrith is at least 5km from the target site as measured by a straight line, and further by road. This equates to supermarkets in Penrith being approximately 10-15 minutes’ drive from Glenmore Park.

45. Further, Glenmore Park is separated from other suburbs to the north by the M4 Motorway. The M4 Motorway is a major highway with limited points of crossing. The ACCC considers that the M4 constitutes both a physical and a perceived barrier to Glenmore Park residents when choosing where to conduct their supermarket shopping.

Origin of customers of Glenmore Park supermarkets

46. The ACCC understands that the Woolworths supermarket at Glenmore Park Town Centre draws the majority of its sales revenues from Glenmore Park residents, and that this is also likely to be the case for any new supermarket built at the target site.

47. Market definition is a separate concept from that of the catchment area of Glenmore Park supermarkets (i.e. the area from where Glenmore Park

² The ACCC understands that one of these Franklins is now an IGA supermarket, while the other (which was located in Westfield Penrith) has closed.
supermarkets draw their customers). However, given the importance of convenience to home for many supermarket shoppers, catchment areas can be a starting point for identifying which other supermarkets are likely to be close substitutes for the target site and therefore form part of the relevant market.

Current shopping patterns of Glenmore Park residents

48. During the course of its review, the ACCC received information on the current shopping patterns of Glenmore Park residents. Glenmore Park residents:

- spend the majority of their supermarket expenditure at Woolworths Glenmore Park;
- spend between 5 and 10% of their supermarket expenditure at Woolworths Southlands (South Penrith); and
- spend around 20% of their supermarket expenditure at supermarkets in Penrith (this includes a Coles, a Woolworths, an ALDI and two Franklins’3).

49. The remainder of Glenmore Park residents’ supermarket expenditure is scattered across a range of suburbs, with no other single suburb attracting more than 1-2% of Glenmore Park residents’ total supermarket expenditure.

50. The ACCC considered these figures carefully, and noted that they support the view that supermarket shoppers generally value convenience to home. Glenmore Park residents, overall, tend to undertake their supermarket shopping at Glenmore Park rather than elsewhere. However, as outlined below, various factors also limited the value of these figures to the definition of the relevant market.

51. First, the ACCC does not consider that there is a particular amount of spending by residents of Glenmore Park at supermarkets located outside of Glenmore Park that is determinative of market definition.

52. There may be a number of reasons why some Glenmore Park residents do some of their supermarket shopping outside Glenmore Park. For example, for some residents, supermarkets outside Glenmore Park may be close to employment, transport hubs or other shops or services. Other residents may prefer a supermarket offer other than Woolworths, and be prepared to incur additional travel costs and inconvenience to access that alternate offer. However, the fact that some Glenmore Park residents currently do some shopping at supermarkets outside of Glenmore Park does not establish that those residents (or other Glenmore Park residents) consider supermarket shopping outside Glenmore Park to be a close substitute for supermarket shopping in Glenmore Park, such that they would be likely to switch more of their grocery shopping to those supermarkets in the event that the supermarket offer in Glenmore Park were to be degraded.

53. Second, the figures outlined at [48] to [49] above relate to current shopping patterns. There is currently only one supermarket within Glenmore Park – the Woolworths at Glenmore Park Town Centre. In the future, an ALDI will also open at the Glenmore Park Town Centre, and, as discussed above, a supermarket will also open at the target site. That is, the figures outlined at [48] to [49] above relate to neither the situation in which the proposed acquisition proceeds (and a Woolworths is developed at the target site), nor to the likely situation in the

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3 As noted earlier in this document, one of these Franklins is now an IGA, while the other has subsequently closed.
absence of the proposed acquisition (in which a non-Woolworths supermarket is developed at the target site).

54. The ACCC expects that once these two additional supermarkets have opened in Glenmore Park, Glenmore Park residents would do an even greater proportion of their total supermarket shopping at supermarkets within Glenmore Park, and would reduce the proportion of their shopping done in areas such as Penrith.

55. Consistent with the material above, the ACCC concluded that, in the future, the three supermarkets located in the suburb of Glenmore Park would be the closest constraints on each other due to their geographic proximity (noting the differentiation of retail offerings between ALDI and Woolworths).

56. The ACCC further concluded that to the extent that supermarkets outside of Glenmore Park impose any competitive constraint on supermarkets located in Glenmore Park, that constraint is limited, and is of insufficient strength for those supermarkets to be considered to be in the same local market as supermarkets located in Glenmore Park.

Other relevant markets

57. The ACCC also considered the proposed acquisition in relation to state-wide retail and wholesale markets covering NSW, but identified no competition concerns in relation to these markets. These markets are not considered further in this Public Competition Assessment.

Likely effect of the proposed acquisition

58. Many proposals involving the acquisition of greenfield supermarket sites (that is, where there is an acquisition or lease of a site that did not previously operate as a supermarket, as opposed to the acquisition of an existing supermarket) are not likely to raise significant concerns under section 50 of the Act.

59. Generally speaking, the ACCC is more likely to have concerns with the acquisition of a new supermarket site where:

- the proposed supermarket operator already has a significant presence in the local market;
- if the proposed supermarket did not open on the site, then an alternative competitive supermarket would be likely to open on that site; and
- the site is in an area where there is limited availability of alternative sites for potential competitors in the local market.

60. For the reasons outlined below, the ACCC concluded that the proposed acquisition would be likely to result in a substantial lessening of competition in the local retail supermarket market by preventing or hindering competition that would likely otherwise have been brought to the local market by an alternative supermarket operator. This competition would be unlikely to be otherwise introduced into the local market because of the lack of other available suitable sites for supermarket development.

The proposed acquisition increases Woolworths’ presence and prevents additional supermarket choice from being introduced into Glenmore Park

61. Woolworths currently operates the only supermarket in Glenmore Park and the next closest supermarket outside of Glenmore Park. The ALDI opening in 2014 will provide choice to consumers, and impose some competitive constraint on
Woolworths. However, as noted above, ALDI generally does not provide the same depth of range as a full-line supermarket.

62. The proposed acquisition by Woolworths of the target site would have the effect of reinforcing Woolworths’ already significant presence in the local market and would also prevent a non-Woolworths supermarket from being established at the site.

63. The retail offer of any non-Woolworths supermarket established at the target site would be likely to be significantly differentiated from Woolworths' retail offer in ways that improve the level of choice available to supermarket customers in Glenmore Park (including in terms of prices, quality and range of products and service). In the absence of that choice being available within Glenmore Park, residents with a preference for the different offer would either have to accept a sub-optimal choice of supermarket or incur costs of additional travel and inconvenience to access their preferred choice. In the absence of other convenient options, a much larger proportion of Glenmore Park residents' current supermarket spending is done at Woolworths supermarkets than would be expected on the basis of general shopping patterns.

64. In contrast, the development of a Woolworths supermarket at the target site would duplicate a retail offer already available in the local market.

65. The proposed acquisition would therefore prevent a non-Woolworths supermarket from expanding the range of supermarket offers available to local customers. Importantly, the proposed acquisition would have this effect irrespective of how Woolworths would choose to respond to a non-Woolworths supermarket at the target site.

The proposed acquisition removes the incentive for Woolworths to improve its local offer in response to the new supermarket.

66. The ACCC also considered that a non-Woolworths supermarket at the target site would introduce competition in the local market to which the existing Woolworths supermarket at Glenmore Park Town Centre would be likely to be forced to respond. Woolworths' response may include increased service, staffing levels or improvements in other non-price aspects of its retail offering. The additional competition may also result in Woolworths engaging in localised price-based competition.

67. In contrast, the development of a Woolworths supermarket at the target site would not provoke a competitive response from the Woolworths at the Glenmore Park Town Centre. Woolworths would be indifferent as to which of its two supermarkets in Glenmore Park local residents visited.

68. The proposed acquisition would therefore foreclose any possibility of Woolworths being forced to improve its local offer in response to a non-Woolworths supermarket being developed at the target site.

Barriers to local entry

69. As the ACCC has noted in previous reviews, barriers to entry to supermarket retailing are generally high. There are considerable lead times and sunk costs involved in establishing a new supermarket, which can pose a particular barrier when the market is already served by multiple existing supermarkets (particularly if they include a scaled incumbent). Lack of access to suitable sites can also be a significant barrier to new entry.
70. The ACCC concluded that lack of access to suitable sites is a particular issue in this local market. This is because the target site is the only site in the local market (or in the suburbs surrounding the local market) that has both the size and the zoning necessary to develop a supermarket. Further, the ACCC understands that there are no plans for further development of the areas surrounding Glenmore Park or the target site in the foreseeable future.

71. For these reasons, the ACCC concluded that there is little prospect of a full line supermarket entering the local market in the foreseeable future other than by developing the target site.

Conclusion

72. On the basis of the above, the ACCC formed the view that Woolworths’ proposed acquisition of the target site would be likely to result in a substantial lessening of competition in the local retail supermarket market surrounding the target site, in contravention of section 50 of the Act.