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Our ref: IM-70129
Contact officer: Georgia Zele/ Stella Leung
Contact phone: 02 9230 9103 / 03 9658 6444

13 March 2019

Dear Interested Party

Re: Request for submissions: IPH Limited's proposed acquisition of Xenith IP Group Limited

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on the proposed acquisition of Xenith IP Group Limited (**Xenith**) (the **proposed acquisition**). We are also seeking your views on IPH's acquisition of a 19.9 per cent interest in Xenith (the **completed acquisition**).

IPH and Xenith provide Australian and international clients with services associated with the registration, protection, commercialisation, enforcement and management of intellectual property (**IP**) rights. Further details regarding the completed acquisition and proposed acquisition can be found at **Attachment A**.

The ACCC's investigation is focused on the impact on competition in the supply of services relating to Australian IP rights including patents, trade marks, designs and plant breeder's rights (**Australian IP services**). In particular, we are seeking your views on:

- the extent of competition between IPH and Xenith
- the likely impact of the proposed acquisition on prices and quality of Australian IP related services
- the extent of future competitive constraints (such as other competitors or new entrant competitors) for the supply of Australian IP related services.

Further issues you may wish to address are set out in **Attachment B**.

This matter is public and you can forward this letter to anybody who may be interested.

The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that are likely to have the effect of substantially lessening competition in a market.

Please provide your response by no later than **5pm on 15 March 2019**. Responses may be emailed to mergers@acc.gov.au with the title: *Submission re: IPH/Xenith - attention Georgia Zele/Stella Leung*. If you would like to arrange a time to discuss the matter with ACCC officers, or have any questions about this letter, please contact Georgia Zele on 02 9230 9103 or Stella Leung on 03 9658 6444.

Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

Confidentiality of submissions

The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Tom Leuner
General Manager
Merger Investigations

Attachment A

IPH Limited

IPH is a publicly listed (ASX: IPH) holding company of a group of businesses that operates in Australia, New Zealand and South-East Asia to provide IP related services to Australian and international clients. These services relate to the creation, protection, commercialisation, enforcement and management of IP rights.

The IPH group includes the following businesses:

- Spruson & Ferguson – provides services relating to patents, trade marks and registered designs. It also provides IP related legal services through an associated firm in Australia. It operates in Australia and across South-East Asia.
- Pizzey's – provides services relating to patents, trade marks and designs. It operates in Australia and Singapore.
- AJ Park – provides services relating to patents, trade marks and registered designs. It also provides IP related legal services through an associated firm. AJ Park operates in New Zealand.

Xenith IP Group Limited

Xenith is a publicly listed (ASX: XIP) holding company of a group of businesses that operates in Australia and New Zealand to provide IP related services to Australian and international clients. These services relate to the creation, protection, commercialisation, enforcement and management of IP rights and also include a set of complementary advisory services.

Xenith's businesses include:

- Griffith Hack – provides services relating to patents, trade marks, registered designs and other IP rights. It also provides IP related legal services through an associated firm.
- Shelston IP – provides services relating to patents, trade marks, registered designs and other IP rights. It also provides IP related legal services through an associated firm.
- Watermark – provides services relating to patents, trade marks, registered design and other IP rights. It also provides IP related legal services through an associated firm.
- Glasshouse Advisory – provides complementary services relating to IP rights, including intangible asset valuation, IP analytics, IP strategy development and innovation incentives such as research and development tax rebates and export market development grants.

The completed acquisition

On 13 February 2019 IPH announced it had acquired a 19.9 per cent holding in Xenith. The ACCC is assessing IPH's acquisition of a 19.9 per cent stake in Xenith under section 50 of the *Competition and Consumer Act*.

The proposed acquisition

On 13 February 2019 IPH announced it intends to vote its shares in Xenith against the proposed merger of QANTM and Xenith and intends to enter into discussions with Xenith and/or QANTM Intellectual Property Limited (**QANTM**) regarding a combination of either the Xenith or QANTM businesses (as alternatives) with IPH.

On 22 February 2019 the ACCC commenced its public review of the completed acquisition and IPH's proposed acquisition of Xenith or in the alternative QANTM, once IPH had provided certain information to the ACCC.

On 12 March 2019 IPH announced it had submitted a proposal to acquire Xenith by way of a scheme of arrangement, and requested that the ACCC cease its review of the acquisition of QANTM as an alternative target.

The proposed merger of QANTM and Xenith

The ACCC is currently separately assessing the proposed merger of QANTM and Xenith (not involving IPH). Further information is on the [ACCC's public mergers register](#).

Attachment B

Overall, the ACCC is interested in receiving feedback about the likely impact of each alternative proposed acquisition on competition for the provision of Australian IP related services in relation to patents, trade marks, designs and plant breeder's rights, whether to Australian or international customers.

Specific questions you can address in your submission are listed below.

1. Please provide a brief description of your business or organisation.
2. Please outline the reasons for your interest in the proposed acquisition, including any commercial relationships with either of IPH or Xenith.

Relevant market(s)

3. IPH and Xenith overlap in the supply of Australian IP related services. Please describe your organisation's purchase of these services. The ACCC would appreciate receiving information about the specific types of services you use, whether they relate to patents, trade marks, designs or plant breeder's rights (and any other services you consider relevant), how you source these services, how you utilise the services and the cost of the services purchased.
4. If possible, please provide market share estimates for the supply of Australian IP related services, separately for patents, trade marks, designs and plant breeder's rights and any other markets you consider relevant to the ACCC's assessment.

Competitive dynamics

5. Please discuss the extent of competition between IPH and Xenith in the supply of Australian IP services.
6. Please identify and describe other suppliers of Australian IP related services, including the extent to which they compete with IPH and Xenith.
7. Please discuss the likelihood of new entry occurring in the supply of Australian IP related services. In your response, please consider the likely timeframe for market entry and provide details about barriers to entry, such as:
 - a. establishing brand and reputation, as well as growing a client base
 - b. restrictions or barriers to individual IP professionals or attorneys switching firms or establishing growing firms
 - c. whether there is any significance to scale in this industry (i.e. whether large firms have any advantages over smaller firms)
 - d. any regulatory barriers
 - e. exclusive/long-term client contracts
 - f. examples of recent market entry and exit.
8. Please discuss the extent to which there are significant clients with the ability to bypass supply from the merged firm by internal supply of Australian IP related services or sponsoring a new entrant, for example through a long-term contract.
9. Please discuss the extent to which firms outside Australia, in particular firms in New Zealand, may compete for the supply of Australian IP related services, and

whether their ability to compete differ depending on the types of IP rights involved.

Other information or competition issues

10. Please provide any additional information or comments, or identify other competition issues, that you consider relevant to the ACCC's consideration of each alternative proposed acquisition under section 50 of the Act.