



Statement of Issues

6 December 2012

Woolworths Limited - proposed acquisition of the Hawker Supa IGA

Introduction

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (**ACCC**) on the proposed acquisition of the Hawker Supa IGA by Woolworths Limited (**proposed acquisition**).
2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
3. In line with the ACCC's Merger Review Process Guidelines (at www.accc.gov.au/processguidelines) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 17 January 2013 and anticipates making a final decision on 7 February 2013. However, the anticipated timeline can change in line with the Merger Review Process Guidelines. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at www.accc.gov.au/mergersregister.
4. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary. The ACCC invites comments from these parties by 17 January 2013.

Background

5. The ACCC commenced its informal review of the proposed acquisition on 15 October 2012.

The parties

The Acquirer: Woolworths Limited

6. Woolworths Limited (**Woolworths**) is an Australian and New Zealand retailer. Its operations include supermarkets, petrol, liquor, general merchandise stores, hardware and home improvement, and consumer electronics.
7. Woolworths is Australia's largest grocery retailer. It operates over 800 supermarkets across Australia.

The Target – Hawker Supa IGA

8. The Supa IGA at Hawker is a 2,000m² supermarket in the Hawker group centre, a moderate sized retail precinct in the greater Belconnen area of north Canberra.
9. The supermarket is considered by market participants to be 'full line', meaning it retails a full range of groceries and fresh produce. It also has a large liquor section with both chilled and non-chilled products.
10. The Supa IGA and the associated liquor licence are currently owned by Dealore Pty Limited (**Dealore**), controlled by Mr John Krnc, who owns several supermarkets in Canberra and nearby areas of NSW.

Other supermarket retailers

Coles

11. Coles is a leading food, liquor and convenience retailer. 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

12. Metcash Limited (**Metcash**) is Australia's largest grocery, fresh produce, liquor and hardware wholesaler and distributor to independently owned supermarkets. Metcash's IGA Distribution (IGA>D) business provides warehousing, distribution and marketing of grocery consumables to independent retailers operating under the IGA, Supa IGA and IGA Xpress supermarket brands. 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.
13. Metcash recently completed the acquisition of Interfrank Group Holdings Pty Ltd from Pick n Pay Retailers (Pty) Ltd, as a result of which Metcash became the owner of the Franklins chain of supermarkets. Metcash has implemented a store sale program to sell the Franklins stores to new or existing IGA branded independent retailers. Metcash is operating the Franklins supermarkets whilst the store sale program is completed.

ALDI Australia

14. ALDI is a privately-owned global supermarket operator that entered Australia in 2001. It has over 250 stores across NSW, the ACT, Queensland and Victoria. Compared to Woolworths and Coles, ALDI has an emphasis on private label products and its stores are often smaller in size.

Supabarn

15. Supabarn is an ACT based, privately-owned supermarket operator that has a number of its own stores in the ACT and NSW. There are also several independently owned stores which operate under the SupaExpress and Supabarn Express banners.

SPAR

16. SPAR Australia is a grocery and packaged liquor wholesaler to around 300 independently owned supermarkets under the SPAR, 5-STAR and Jardin Fresh Life banners.

The transaction

17. Woolworths proposes to acquire the business, business assets and liquor licence of the Hawker Supa IGA from Dealore, and rebrand the supermarket as Woolworths. Post-acquisition Dealore will continue to own the building and the leasehold land on which the building is located which will then be leased to Woolworths. As such, the vendor will remain as landlord to Woolworths post acquisition.

Market inquiries

18. On 16 October 2012 the ACCC commenced market inquiries regarding the proposed acquisition. Submissions from interested parties closed on 5 November 2012. The ACCC has received information from a range of interested parties.
19. The ACCC is now calling for further information from interested parties to assist with its investigation as set out below.

With/without test

20. In assessing a proposed acquisition pursuant to section 50 of the *Competition and Consumer Act 2010 (Cth)* (**the Act**), the ACCC considers the effects of the acquisition by comparing the likely future competitive environment if the acquisition proceeds (the 'with' position) to the likely future competitive environment if the acquisition does not proceed (the likely 'without' or 'counterfactual' position) to determine whether the acquisition is likely to substantially lessen competition in any relevant market.
21. In this case, the target is a profitable business which has recently undergone renovations and therefore the target is likely to continue operating as an independent supermarket absent the proposed acquisition.
22. As such, the ACCC considers that the appropriate 'without' position is a continuation of the status quo.

Market definition

23. The ACCC's preliminary view is that the competitive effects of the proposed acquisition should be assessed in the context of the following markets:
 - a. a local retail supermarket market surrounding the target, which includes areas of southern and western Belconnen extending as far as the

Belconnen Town Centre, Jamison Centre (in Macquarie) and potentially the Kippax Centre to the west (in Holt);

- b. a state-wide retail supermarket market covering NSW and the ACT; and
 - c. state-wide wholesale procurement and supply markets covering NSW and the ACT.
24. The ACCC also considered the acquisition in relation to retail liquor markets but as no concerns have been identified these markets have not been considered further. The target faces competition for liquor sales from a range of Coles, Woolworths and independent bottleshops and supermarkets.

Retail markets

25. The ACCC considers that in retail markets involving chains and/or buying groups, competition may occur at both the national or state level and at the local geographic level. While all retailers compete to attract customers from other similar retailers located in the same local area, large chains/brands also compete through elements of their retail offers that are standardised across all stores within a broader area.

Local retail supermarket market

26. When assessing local retail markets, the ACCC aims to identify the competitive constraints on the store level retail offers of the target store and other nearby stores operated by the acquiring firm.
27. The Hawker Supa IGA is located in the suburb of Hawker, in the Belconnen district in north western Canberra. The Belconnen district is separated from central Canberra by a large nature reserve, from southern Canberra by Lake Burley Griffin and from the Gungahlin district by the Barton Highway.
28. In addition to barriers separating Belconnen from other areas of Canberra, the ACCC has taken account of submissions received in market inquiries as to the likely dimensions of the local market. The ACCC has also considered evidence of existing shopping patterns and the likely travel patterns and behaviours of customers within Belconnen who currently shop at the Hawker Supa IGA.
29. The ACCC has also considered alternative approaches to identify local markets, such as straight line distances and drive time analysis.
30. Given the above considerations, supermarkets within the suburbs of Higgins, Scullin, Page, Hawker, Macquarie, Belconnen Town Centre, Holt and Florey are likely to be proximate enough to provide a close substitute for the target. Each of these suburbs has easy access to Hawker and all are within 5km or 10 minutes' drive of the Hawker Supa IGA.
31. Parts of suburbs in northern and north-western Belconnen, including Melba, Flynn, Charnwood and Evatt are within 5km or 10 minutes' drive of the target. However, these are divided from the target by Ginninderra Drive (the major thoroughfare between north western Belconnen and the Belconnen Town Centre and central Canberra). The ACCC considers it is unlikely that residents in this area would consider the target to be a close substitute for supermarkets located north of Ginninderra Drive.
32. The ACCC considers that the following shopping locations are likely to fall within the local geographic market of the Hawker Supa IGA:
- a. the Belconnen Town Centre;

- b. the Jamison Centre, located in Macquarie, to the east of Hawker; and
 - c. local centres in the surrounding suburbs of Higgins, Scullin and Florey.
33. The ACCC notes that the Kippax Centre, while separated from Hawker by a major thoroughfare (Kingsford Smith Drive), may be sufficiently close to be part of the local market. The ACCC has had regard to evidence that residents of Hawker and surrounding suburbs do patronise the Kippax Centre, although to a lesser extent than Belconnen.
34. The ACCC considers that from a geographic perspective the Charnwood Group Centre and the local centres at Melba and Evatt appear to be at or beyond the periphery of the relevant local market. Similarly, supermarkets at Kaleen and Giralang are beyond a 5km or 10-minute drive from the target, and separated from the target by the Belconnen Town Centre and Lake Ginninderra. The ACCC considers the extent of competition between the target and these supermarkets is unlikely to be sufficient to include them in the local market.

State-wide retail supermarket market

35. In defining the broader retail market, the key is to identify the constraints on the aspects of Woolworths' retail offer that are standardised across multiple local markets.
36. Woolworths currently standardises elements of its retail offer (such as state-wide marketing campaigns and pricing on most products) across all stores in NSW and the ACT. This standardisation is a matter of policy that can be changed in response to competitive conditions.
37. The ACCC therefore considers that the relevant geographic market in which to consider broader aspects of supermarket competition is ACT/NSW-wide.

Wholesale procurement and supply markets

38. Consistent with its consideration of previous supermarket acquisitions, the ACCC has also considered the proposed acquisition in the context of state-wide markets for the wholesale procurement and supply of products sold in supermarkets.

The ACCC invites comments from interested parties on its proposed definition of the relevant markets. In particular you may wish to comment on:

- i. the extent to which customers view supermarkets in Kippax, Melba, Charnwood, Evatt and further afield as close substitutes for the target; and
- ii. what factors influence the distance that customers in this region are willing to travel to do their grocery shopping.

Statement of issues

39. 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 raise concerns'.

Issues that may raise concerns

Local retail supermarket market

40. The ACCC's preliminary view is that the proposed acquisition may result in a substantial lessening of competition in the local retail supermarket market.
41. The local market posited above includes:
 - a. the target;
 - b. one Woolworths supermarket at the Belconnen Town Centre;
 - c. two Coles supermarkets, at the Belconnen Town Centre and the Jamison Group Centre;
 - d. two Aldi supermarkets, at the Belconnen Town Centre and the Jamison Group Centre; and
 - e. three smaller format independent supermarkets in nearby local centres (Foodworks in Higgins, 5 STAR at Scullin and SupaExpress at Florey).
42. If Kippax were included in the local market, an additional Woolworths and Aldi would be included, as would the nearby small format IGA in Holt.
43. The ACCC considers that the proposed acquisition may have the effect of substantially lessening, preventing or hindering competition in the local market by removing Hawker Supa IGA as an independent rival in the market. The Hawker Supa IGA's differentiated product and service offering represents a competitive response to the offer of rival supermarket chains, providing additional choice to consumers. Given the market is characterised by high barriers to entry, new entry at a sufficient scale to replace the lost competitive tension is unlikely.

Existing competitive behaviour of the Hawker Supa IGA

44. Market inquiries have indicated that the Supa IGA at Hawker competes with other supermarkets in the local market by providing a price and non-price offering that is unique to the local market. Rather than seeking to match its competitors' offerings, it provides a differentiated offer.
45. In particular, the Hawker Supa IGA is the only full-line independent supermarket in the local market, with the closest alternative being the Supabarn at Kaleen. This Supabarn is unlikely to be part of the same local market (as discussed above). Full-line supermarkets offer a wide range of supermarket products including groceries, deli and fresh produce and in most cases will offer multiple brands of common products. They are distinct from smaller format independent supermarkets (such as those listed in paragraph 41.e above, and the IGA in Holt). They can also be distinguished from the competitive offer of Aldi, with its more focused product range, smaller store size and emphasis on private label brands. As an independent full-line supermarket, the Hawker Supa IGA differentiates its offer in terms of price, product range and service.
46. First, it has a unique price promotional cycle through the Supa IGA brand. All Supa IGA supermarkets provide standard promotions through a weekly catalogue. While some of the promotional items are also provided in smaller format IGAs (such as the IGA in Holt), the range at Supa IGA is broader. The target is the only Supa IGA in north Canberra, so even if the local market were broader than the ACCC has defined, this concern would remain relevant.

47. Second, elements of its product range are differentiated from its competitors. Market inquiries have indicated that the Hawker Supa IGA provides an extensive delicatessen, local and specialty products that are not stocked by the major chains, and brands supplied exclusively by Metcash.
48. Third, market inquiries have indicated there are a range of aspects of service at the target that are valued for being distinct from the offerings available from other providers. For example:
 - a. the ready availability of staffed checkouts (indeed some customers value the absence of self service checkouts);
 - b. a general perception of high quality and personal service; and
 - c. general comments that the offer at the target is valued simply for being different to the standardised offers of Woolworths and Coles.

Barriers to entry

49. 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.
50. This is a particular concern in the ACT due to the restrictive planning regulations which prevent new supermarket entry and restrict the size of supermarkets on existing sites. The ACCC understands that, as a result of these restrictions, there are no suitable sites available in the local market to establish a full-line supermarket or expand an existing smaller format supermarket to a full-line scale.
51. As such, new entry (or expansion by an existing operator) to replace the offering of the Hawker Supa IGA is unlikely.
52. The ACCC's preliminary view, therefore, is that the proposed acquisition would replace the differentiated offer of the target with the standardised offer of Woolworths, which is already available in the local market. In contrast, in the absence of the proposed acquisition, it is likely that an independent full line supermarket will continue at the site of the current Supa IGA.

The ACCC invites comments from interested parties on the following matters:

- i. the likelihood of an independent full line supermarket continuing operation in the local market should the proposed acquisition not proceed;
- ii. the extent to which the Hawker Supa IGA contributes a differentiated retail offering in the local market compared with Woolworths, Coles, ALDI and other independent supermarkets; and
- iii. the extent to which the Hawker Supa IGA can be classified as a 'full-line' supermarket.

Issues unlikely to raise concerns

State-wide retail supermarket market

53. The ACCC considers that the proposed acquisition would be unlikely to pose concerns in the state-wide retail supermarket market as the transfer of a single supermarket would result in only a very small increase in state wide market share for Woolworths. Further, it would not result in a reduction in the number of operators and retail chains competing with Woolworths on a state-wide level. It would therefore not be likely to have a substantial impact on competition in the state-wide market.

Wholesale procurement and supply markets for products sold in supermarkets

54. Market inquiries have suggested that the proposed acquisition could have an impact on the wholesale supply market in NSW and the ACT, as the Hawker Supa IGA is one of only a small number of large, independent full line supermarkets in the ACT. Without the proposed acquisition, the target is a customer that could be won over by existing or potential new non-vertically integrated wholesalers. This may therefore increase barriers to entry for an alternative wholesale supplier. However, the ACCC notes the sale of a single supermarket is unlikely to be sufficient to have a substantial effect on the viability of wholesale operations, which need to achieve a large scale to be efficient. The ACCC does not consider the volume of a single supermarket is likely to have a significant effect on competition in the wholesale procurement market.

The ACCC invites comments from market participants on the likely effect of the proposed acquisition of the Hawker Supa IGA on state-wide retail supermarket markets or wholesale procurement and supply markets.

In particular market participants may wish to comment on:

- i. the extent to which competitors of the target or Woolworths monitor and respond to the Hawker Supa IGA, Supa IGA brand or the IGA brand when determining their pricing and service levels across the NSW/ACT retail market; and
- ii. the impact the proposed acquisition is likely to have on wholesale procurement and supply of supermarket goods in the ACT.

ACCC's future steps

55. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
56. 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.
57. Submissions are to be received by the ACCC no later than 17 January 2013. 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.
58. The ACCC intends to publicly announce its final view by 7 February 2013. However the anticipated timeline may change in line with the Merger Review Process Guidelines. A Public Competition Assessment for the purpose of

explaining the ACCC's final view may be published following the ACCC's public announcement.