



## Public Competition Assessment

28 November 2013

### Westfield Group and Westfield Retail Trust - proposed acquisition of Karrinyup Shopping Centre

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#### Introduction

1. On 5 September 2013, the Australian Competition and Consumer Commission (**ACCC**) announced its decision not to oppose the proposed acquisition of Karrinyup Shopping Centre (**Karrinyup**) by Westfield Group (**Westfield**) and Westfield Retail Trust (**WRT**) (**proposed acquisition**), subject to a section 87B undertaking (the **undertaking**) accepted by the ACCC on 4 September 2013. The ACCC decided that the proposed acquisition, in conjunction with the undertaking, would be unlikely to have the effect of substantially lessening competition in any market 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 Westfield and WRT and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC reached its decision on the proposed acquisition, subject to confidentiality considerations.

#### 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:
  - a proposed acquisition is opposed;
  - a proposed acquisition is subject to enforceable undertakings;
  - the merger parties seek such disclosure; or
  - a proposed 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 ACCC's decision not to oppose Westfield and WRT's proposed acquisition of Karrinyup was subject to a court enforceable undertaking.
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 its own merits.
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 merger 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.
8. This Public Competition Assessment outlines the circumstances and assessment at the time of the ACCC decision. Events that have occurred post the ACCC decision that are relevant to this matter are clearly identified.

## The parties

### The acquirers: Westfield and WRT

9. At the time of the ACCC's review, Westfield and WRT, in the Perth metropolitan area, jointly owned:
  - Westfield Innaloo, the Innaloo MegaCentre and Innaloo Shoppers Village (co-located) (together, **Innaloo**) in north metropolitan Perth;
  - Westfield Carousel located in south metropolitan Perth;
  - a 50 per cent interest in Westfield Whitford City located in north metropolitan Perth; and
  - a one-third interest in Karrinyup, located in north metropolitan Perth (managed by a subsidiary of AMP Capital Investors (**AMPCI**)).

#### Westfield

10. Westfield develops, owns and manages shopping centres in Australia and also in New Zealand, the United States and the United Kingdom. Shopping centres in which Westfield and WRT have an ownership interest are typically managed by Westfield.

#### WRT

11. WRT is an A-Retail Estate Investment Trust (A-REIT) comprised of two stapled unit trusts operating as a single economic entity, listed on the Australian Stock Exchange (**ASX**). WRT was established in 2010 as a result of a de-merger with Westfield. WRT invests in shopping centres in Australia and New Zealand. The ownership interests held by WRT are in shopping centres in which Westfield also has an ownership interest and these are typically also managed by Westfield.
12. The stapled unit trusts are managed investment schemes operating with responsible entities. The responsible entities of WRT are RE1 Limited, as responsible entity of Westfield Retail Trust 1, and RE2 Limited, as responsible entity of Westfield Retail Trust 2. Westfield Holdings Limited, a member of the separately ASX-listed Westfield Group, owns the responsible entities.

13. The Board of WRT is currently comprised of eight directors, six of whom are independent directors. Of the remaining directors Mr Stephen Lowy and Mr Peter Allan are currently both executive directors of Westfield Group. That is, Westfield and WRT have two common directors. WRT engages Westfield under various contractual arrangements, including for corporate services and branding.

#### The target: Karrinyup

14. At the time of the ACCC decision, Karrinyup was owned by the KSC Trust, a registered investment scheme.
15. The WestArt Trust (which through an interposed trust is owned by Westfield and WRT) was the owner of a one-third unit-holding in the KSC Trust. The remaining two-thirds unit holding in the KSC Trust was owned by UniSuper. The responsible entity of the KSC Trust is AMP Capital Funds Management Limited (**AMP**). AMPCI, another AMP entity, acts as the asset manager of the KSC Trust and in that role appointed AMP Shopping Centres Pty Ltd and Jones Lang LaSalle as the manager of Karrinyup.
16. Karrinyup is located in north metropolitan Perth, approximately 3.3 kilometres north-west of Innaloo. Karrinyup is classified as a regional shopping centre in that it has at least one department store (Karrinyup in fact has both a David Jones and a Myer), a discount department store, supermarkets, a range of specialty stores and a gross lettable area of over 30,000 square metres and good parking.

#### The proposed transaction

17. WestArt Trust (Westfield/WRT) and UniSuper, as unitholders in the KSC Trust, agreed to enter into a buy/sell arrangement pursuant to which they were to bid against each other in an auction process in respect of the other units in the KSC Trust. The successful bidder, or its nominee, would acquire the other unitholder's units in the KSC Trust. As explained in the Conclusion section below, subsequent to the ACCC's decision, the outcome of the above described auction process resulted in the sale by Westfield and WRT of their interest in the KSC Trust to UniSuper. Therefore the proposed acquisition did not proceed.

#### Review timeline

18. On 15 August 2011, the ACCC commenced a public informal review of the proposed acquisition. At the request of Westfield and WRT, the ACCC's timeline for the review was suspended on 20 December 2011 to allow Westfield and WRT to make further submissions. In April 2012 Westfield and WRT commenced a sale process with respect to Innaloo to address ACCC competition concerns identified at the time and the ACCC's timeline remained suspended during that process.
19. In July 2013, Westfield and WRT informed the ACCC of its intention to retain Innaloo. As outlined in the review timeline below, Westfield and WRT requested a new informal review of the proposed acquisition, which the ACCC commenced on 22 July 2013. In conducting its review, the ACCC had regard to the timing of the auction process between Westfield, WRT and UniSuper.
20. The preliminary concerns identified in market inquiries would ordinarily have resulted in the release by the ACCC of a Statement of Issues and further consultation with interested parties. However, to provide the merger parties

with a final decision before the auction process between Westfield, WRT and UniSuper, the ACCC considered the undertaking in parallel with its review of the proposed acquisition. Ultimately, as described above, the ACCC decided that the undertaking addressed the preliminary competition concerns identified in market inquiries.

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

<b>Date</b>	<b>Event</b>
22-Jul-2013	ACCC commenced a new review under the Merger Process Guidelines.
09-Aug-2013	Closing date for submissions from interested parties.
05-Sep-2013	ACCC announced it would not oppose the proposed acquisition, subject to section 87B undertaking accepted by the ACCC.

## **Market inquiries**

22. The ACCC consulted widely with a range of industry participants, including competitors, retailers, industry bodies and other government organisations.

## **Areas of concern**

23. The ACCC considered that, in the absence of the undertaking, the proposed acquisition may have had the effect, or may have been likely to have the effect, of substantially lessening competition in relation to:

- the supply of retail space in shopping centres (encompassing regional shopping centres and sub-regional shopping centres) to retailers in north-west metropolitan Perth; and
- the supply of shopping centre amenities to customers (shoppers) in north-west metropolitan Perth.

24. As outlined further in the Market Definition section below, the ACCC considered that the relevant geographic market for assessing the impact of the proposed acquisition is the north-west metropolitan corridor of Perth, extending approximately 10 kilometres north of Karrinyup, 10 kilometres south of Karrinyup and bounded by the Indian Ocean to the west and the Mitchell Freeway to the east.

## **Competition Test**

25. In assessing a merger pursuant to section 50 of the Act, the ACCC considers the effects of the merger by comparing the likely competitive environment post-merger if the merger proceeds (the “with” position) to the likely future competitive environment if the merger does not proceed (the “without” position).

26. During its assessment of the proposed acquisition, the ACCC assessed the future competitive environment without the merger proceeding, in which case UniSuper, or its nominee, would successfully acquire Westfield and WRT’s interests in Karrinyup and therefore become the sole owner of Karrinyup. AMP would continue as the responsible entity of the KSC Trust and manager of Karrinyup.

27. The ACCC also assessed the future competitive environment with the merger proceeding in the context of Westfield and WRT divesting Innaloo to an ACCC-approved purchaser.

## Industry Background

28. Consumers' shopping trips, and the products and services that they purchase during these trips, can be classified into several types. The types most relevant to the proposed acquisition are: convenience shopping, comparison shopping, multi-purpose and single-purpose shopping. These terms are explained below:
- **convenience shopping** – shoppers undertake convenience shopping when purchasing low priced items with little differentiation between retail outlets. Given transport and search costs, consumers generally do not shop around for such purchases but instead buy from the closest (most convenient) shop. Many purchases from newsagents and pharmacies are examples of convenience shopping;
  - **comparison shopping** – consumers often undertake comparison shopping when they purchase differentiated products such as clothing and footwear. For such purchases, consumers may wish to compare the offerings of a number of retailers and therefore shop around before purchasing. This causes the consumer to incur search costs (including transport and time spent shopping around);
  - **multi-purpose shopping** – consumers frequently engage in more than one type of shopping on a single trip in order to save time. For example, consumers may purchase a newspaper from the newsagent, buy their groceries and purchase a new pair of shoes in a single shopping trip; and
  - **single-purpose shopping** – consumers are more likely to undertake single purpose shopping trips to retailers selling complex, relatively expensive goods – such as cars and electrical goods – that are purchased by consumers after engaging in complex decision making. Consumers are frequently willing to travel longer distances to such retailers to purchase a single item because travel costs are a relatively small part of the total cost of the item. Retailers selling these products derive fewer benefits from co-locating with other retailers and generate limited externalities for other retailers.
29. In contrast to unplanned shopping areas, such as shopping strips where retail space is owned by a number of owners, retail space in a planned shopping centre, such as Karrinyup, is owned by the same entity. The owner of a planned shopping centre determines the overall layout and composition of stores within the centre and is able to restrict the entry of stores, or particular types of stores, so as to maximise the overall profit that can be derived from the retail space. The amount of profit that can be earned will also depend on the strength of competition from other shopping centres and retail areas such as shopping strips.
30. Shopping centre owners also make decisions about improvements in existing amenities, expansion of the centre and retail mix according to the likely impact of these changes on the total profit that can be extracted from the retail space. This will also depend partly on the strength of competition from other shopping centres and areas, and thus the likelihood that these investments will succeed in attracting additional shoppers and increasing sales for new and existing retail tenants.

31. In the retail industry, shopping centres are classified in a hierarchy according to the retail mix (for example, whether or not a shopping centre includes a full line department store) the total gross lettable area, and the coverage of retail needs offered by a shopping centre. The types of shopping centres most relevant to the proposed acquisition are regional shopping centres and sub-regional shopping centres.
32. A regional shopping centre, such as Karrinyup, typically incorporates at least one full line department store, a full line discount department store, one or more supermarkets and approximately 100 specialty shops. The total gross lettable area in a regional shopping centre generally ranges between 30,000 and 50,000 square metres. Regional shopping centres generally include extensive coverage of a broad range of retail needs, and provide a broad range of shopper facilities and amenities.<sup>1</sup>
33. A sub-regional shopping centre, such as Innaloo, is a medium-sized shopping centre typically incorporating at least one full line discount department store, a major supermarket and approximately 40 specialty stores. The total gross lettable area of a sub-regional shopping centre generally ranges between 10,000 and 30,000 square metres. Sub-regional shopping centres generally provide a broad range of retail needs and shopper facilities and amenities.<sup>2</sup>

## Competition analysis

34. Based on information provided by Westfield and WRT, and on information arising from market inquiries, the ACCC considered that, in the absence of the undertaking, the proposed acquisition may have had the effect, or may have been likely to have the effect, of substantially lessening competition in relation to the market for supply of retail space in shopping centres to retailers in north-west metropolitan Perth and/or the market for the supply of shopping centre amenities to customers (shoppers) in north-west metropolitan Perth. The below competition analysis outlines the basis on which the ACCC reached this view in respect of the proposed acquisition, subject to confidentiality considerations.

### *The economics of shopping centres*

35. Shopping centres may be characterised as two-sided platforms that bring together two sets of customers – shoppers and retail tenants. As with other two-sided platforms, the value of the shopping centre for each set of customers depends on the number and quality of customers on the other side of the platform. The better the amenities and choice of shops in a shopping centre, the more attractive it will generally be to shoppers. On the other side, the greater the number of shoppers, or the higher the value of the shoppers (in terms of the amount spent on shopping) that a shopping centre attracts, the more attractive the centre is to actual and potential retail tenants and the more rent a shopping centre owner will be able to charge.
36. In this regard, and in common with other two sided markets, the structure of prices differs on each side of the platform. Shopping centres generally do not charge shoppers but instead derive revenue from retail rents. Shopping centres compete to expand their base of shoppers by offering an attractive retail mix, better amenities, free car parking or longer opening hours. If a

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<sup>1</sup> Based on the *Property Council of Australia Shopping Centre Directories* definition of a regional shopping centre.

<sup>2</sup> Based on the *Property Council of Australia Shopping Centre Directories* definition of a sub-regional shopping centre.

shopping centre succeeds in expanding its base of shoppers it will correspondingly be able to extract higher rents from retail tenants.

37. The retail composition of a shopping centre is particularly important to attract shoppers. Anchor tenants – often a department store or supermarket – generate considerable foot traffic for a shopping centre and thus indirectly increase sales by smaller, lesser known stores with less ‘pulling power’ than the anchor. Both the number and identity of the anchor tenants, as well as the rent and other terms and conditions of the lease, will be important attributes of alternative retail sites to specialty retailers.
38. Importantly, shopping centres compete with each other to attract new retail tenants and retain existing retail tenants when leases are due for renewal. Indeed, shopping centre owners and managers seek to attract certain types of retailers, even specific retailers, in accordance with strategic plans for optimising a shopping centre’s retail mix.
39. Retailers catering to comparison shoppers that co-locate in a shopping area are typically more attractive to consumers than those retailers that do not co-locate. The shopping centre will typically include a number of differentiated comparison retailers (for example stores offering different brands of clothing) making it more likely that the shopper will find a product that meets their needs. Stores relying on comparison shopping benefit particularly from so-called agglomeration economies that arise when similar stores are located in close physical proximity within a shopping centre. This is because the increased foot traffic generally increases overall sales revenue, notwithstanding the direct competition from rival retailers.
40. As outlined further in Market Definition below, the ACCC considered that for specialty retailers relying on comparison shopping, Karrinyup and Innaloo are the only two suitable alternative locations available in north-west metropolitan Perth.

## **Market Definition**

41. In previous reviews of proposed acquisitions in the shopping centre industry, the ACCC has identified separate markets for regional and sub-regional shopping centres.
42. However, the ACCC’s approach to market definition based on the factual circumstances relating to the proposed acquisition (namely, the geographic proximity of Karrinyup and Innaloo and Innaloo’s ability to successfully attract specialty retailers despite not benefiting from a full line department store), has resulted in Karrinyup, a regional shopping centre, and Innaloo, a sub-regional shopping centre, being included in the same relevant market.
43. Innaloo is approximately 10 kilometres north-west of Perth’s CBD. The centre is anchored by Coles, Woolworths, Kmart and Target with over 150 specialty stores and over 2000 car spaces. Westfield completed a redevelopment of Innaloo in 2005, which introduced over 30 additional specialty stores, a Coles Supermarket and an extended fresh food section. In 2006, Westfield acquired an adjacent supermarket comprising approximately 9500 square metres of gross lettable area, providing opportunity for future expansion.
44. Given the ACCC’s purposive approach to market definition, where different factual scenarios arise, this approach may not be applicable in future proposed acquisitions in the shopping centre industry.

45. The ACCC considered that the following two markets were most relevant to the assessment of the competitive impact of the proposed acquisition:
- **market one:** the supply of retail space in shopping centres (encompassing regional shopping centres and sub-regional shopping centres) to retailers in north-west metropolitan Perth; and
  - **market two:** the supply of shopping centre amenities to customers (shoppers) in north-west metropolitan Perth.

## Product Market

### *Market one - the supply of retail space in shopping centres to retailers*

46. The ACCC formed the view that the extent to which different types of retail space would be a suitable alternative to retail space in Karrinyup for retailers depends on the number of people visiting the shopping area, the customer spend associated with the area, ease of access (connections to freeways and public transport), amenities such as parking as well as the type and range of other shops located in the centre. The presence of department stores and other anchor tenants in particular is influential on specialty retailers' decision as to whether to locate in a particular centre.
47. The ACCC also formed the view that the type of shopper a retailer is trying to attract will impact their retail requirements and the range of suitable alternative retail space available to them. For example, whether the retailer seeks to have a store serving each and every customer catchment area or whether the retailer is seeking to operate an independent store.
48. Different types of shopping centres and retail space, such as neighbourhood shopping centres and retail strips, may be a suitable alternative for retailers of homogeneous and/or convenience goods such as newsagents and pharmacies so long as the traffic generated at those areas is of comparable quality and quantity to the shopping centre.
49. In contrast, retailers that rely on comparison shopping by consumers derive the greatest benefits from co-locating with retailers selling similar but differentiated products (for example, fashion products), and from the additional foot traffic generated by anchor tenants. Comparison retailers are more likely to seek to locate in a shopping centre and less likely to consider alternative retail areas to be suitable alternatives.
50. These types of retailers comprise a significant proportion of retail outlets at Karrinyup and Innaloo. Other retail areas, such as strip malls and neighbourhood shopping centres, are unlikely to be a suitable alternative for retail space in a regional or sub-regional shopping centre for such retailers. Thus, the proposed acquisition may have had a particular effect on competition to supply retail space to those retailers in north-west metropolitan Perth.
51. As such, the available suitable alternatives to Karrinyup for specialty retailers relying on comparison shopping formed the focus of the ACCC's review. The ACCC's market inquiries indicated that Innaloo was the only suitable alternative to Karrinyup for these retailers in north-west metropolitan Perth.

### *Market two: the supply of shopping centre amenities to customers (shoppers)*

52. Shopping centres compete to attract shoppers through the retail mix as well as by offering amenities such as car parking, children's play areas, rest areas and bathrooms. The higher the quality of amenities offered, the more attractive a

shopping centre will be to shoppers. The ACCC considered this to be a relevant market for the purposes of assessing the potential competitive effects of the proposed acquisition.

## Geographic market

53. The ACCC considered that the relevant geographic market for the supply of retail space is determined by considering which other shopping areas (if any) retailers could move to while retaining a significant proportion of their *existing* customer base. The ACCC considered, based on market inquiries and information about Karrinyup and Innaloo that the primary catchment area of Karrinyup is west of the Mitchell Freeway.
54. For specialty retailers, in particular those retailers relying on comparison shopping, shopping centres located east of the Mitchell Freeway are not viable substitutes to retail space at Karrinyup. A number of retailers indicated that retail space east of the Mitchell Freeway would be a poor substitute to retail space in the shopping centres west of the Mitchell Freeway as the Freeway acted as a natural barrier. Market inquiries indicated that customers residing in the northern coastal regions in Perth do not typically cross the Mitchell Freeway to shop.
55. Market feedback identified that retail space beyond the 10 kilometre radius to the north and south of Karrinyup serves different customer bases and was not a close substitute to retail space within this radius. Retailers submitted that they would be unlikely to move beyond this boundary in response to a rent increase at Karrinyup because their existing customers would be unlikely to follow them to alternative retail space.
56. The ACCC concluded that the relevant geographic market for assessing the proposed acquisition was north-west metropolitan Perth, extending 10 kilometres north of Karrinyup, 10 kilometres south of Karrinyup and bounded by the Indian Ocean to the west and Mitchell Freeway to the east (**north-west metropolitan Perth**).

## Likely effect of the proposed acquisition

### Market one – supply of retail space in shopping centres to retailers in north-west metropolitan Perth

57. The ACCC was concerned about the future ability of Westfield and WRT to extract higher rents from retailers seeking to lease retail space in north-west metropolitan Perth, and in particular from retailers relying on comparison shopping such as clothing, footwear, jewellery and gift stores. This was the ACCC's primary competition concern. The ACCC considered that retailers relying particularly on comparison shopping are typically limited to locating in regional, large sub-regional shopping centres and potentially some major commercial centres such as those located in central business districts. The ACCC did not consider neighbourhood shopping centres to provide a suitable alternative for such retailers.
58. The ACCC considered that there is limited suitable alternative retail space available in north-west metropolitan Perth for retailers that rely on comparison shopping. The ACCC considered that retail space at Innaloo, which is located approximately 3.3 kilometres from Karrinyup, is a commercially suitable alternative to retail space at Karrinyup. While Innaloo is currently a sub-regional shopping centre and does not benefit from a full line department store, Innaloo has two discount department stores and two supermarkets and

has been able to successfully attract a number of retailers which rely on comparison shopping. The ACCC considered Karrinyup and Innaloo to be each other's closest competitors. The ACCC was therefore concerned that competition between shopping centres to attract and retain retail tenants may have been substantially reduced by the proposed acquisition. Specifically, the ACCC was concerned about the ability and incentive for Westfield and WRT to impose rents and/or other terms and conditions of tenancies on existing and new entrant retailers that would not be possible in the absence of the proposed acquisition.

59. The ACCC was also concerned that the proposed acquisition had the potential to reduce the incentives of Westfield and WRT to expand, develop and maintain Innaloo and thereby create a stronger competitor to Karrinyup if they owned both shopping centres. The ACCC considered that any such change in incentives may have resulted in a reduction in the quality of available retail space or a reduction in future available retail space, and thus increase its ability to charge higher rents to retailers because of a likely retail space supply shortage, to both existing and new entrant retailers in the absence of the proposed acquisition.

### Market two - the supply of shopping centre amenities to customers (shoppers) in north-west metropolitan Perth

60. The ACCC was concerned about the extent to which the proposed acquisition would impact on shoppers in north-west metropolitan Perth, in terms of shopping centre amenities. The ACCC considered that common ownership of Karrinyup and Innaloo by Westfield and WRT, and any reduced incentive to expand and develop Innaloo, would have had the potential to result in reduced amenities and retail offerings to shoppers when compared to the position in the absence of the proposed acquisition.

## Undertaking

61. On 4 September 2013, the ACCC accepted a court enforceable undertaking from Westfield Management Limited (in its capacity as responsible entity of the Westfield Trust), on behalf of itself and the Westfield Group RE1 Limited and RE2 Limited, pursuant to section 87B of the Act.

### Undertaking sale process and transaction structure

62. Westfield and WRT entered into a Put and Call Option Deed (**PCOD**) which, upon its exercise by Westfield and WRT, would require an ACCC-approved buyer (being each of The Trust Company (Australia) Limited, Bieson Pty Limited, The Trust Company Limited, and Charter Hall Nominees Pty Limited) (the **Buyer**) to purchase Innaloo from Westfield and WRT.

63. The undertaking to the ACCC required Westfield and WRT to:

- exercise its put option to require the Buyer to purchase Innaloo within 2 business days of acquiring an interest in 50 per cent or more of Karrinyup;
- if divestiture of Innaloo via the PCOD failed, divest Innaloo in accordance with the ACCC's standard post-merger divestiture process; and
- if Westfield and WRT failed to divest Innaloo in the initial sale period, divest Innaloo in accordance with the ACCC's standard provisions.

64. In addition, the undertaking contained a number of obligations aimed at maintaining the economic viability, marketability, competitiveness and goodwill of the divestiture business prior to divestiture.

### Objective of the undertaking

65. The objective of the undertaking was to address the competition concerns which would otherwise have arisen as a consequence of the proposed acquisition. The undertaking aimed to achieve this objective by:
- maintaining the competition which existed before the proposed acquisition through the creation of a viable, effective, stand-alone independent and long term competitor in the supply of retail space in shopping centres in north-west metropolitan Perth;
  - ensuring that any purchaser of the Divestiture Business (Innaloo) approved by the ACCC has the necessary assets, rights and agreements to compete effectively with Westfield and WRT;
  - maintaining the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to divestiture;
  - requiring Westfield and WRT to appoint an Approved Independent Manager to manage the Divestiture Business until the completion of the divestiture of the Divestiture Business in the event that Westfield and WRT fail to divest the Divestiture Business to the Buyer pursuant to the Put and Call Option Deed; and
  - providing for the effective oversight of Westfield and WRT's compliance with the undertaking.

### Conclusion

66. On the basis of the above, including taking into account the undertaking offered by Westfield Management Limited, RE1 Limited and RE2 Limited and accepted by the ACCC, the ACCC formed the view that the proposed acquisition of Karrinyup by Westfield and WRT would not be likely to have the effect of substantially lessening competition in any market in contravention of section 50 of the Act.

### Post-ACCC decision developments

67. On 10 September 2013, Westfield and WRT sold their one-third interest in Karrinyup to UniSuper. As a result, the proposed acquisition was not completed by Westfield and WRT and therefore the substantive obligations of the undertaking offered to the ACCC to address its competition concerns in respect of the proposed acquisition, did not come into effect.

68. On 19 September 2013, subsequent to Westfield and WRT selling their interest in Karrinyup, Westfield and WRT requested that the undertaking be withdrawn. In accordance with section 87B of the Act, the undertaking was withdrawn on 9 October 2013.