



Public Competition Assessment

5 December 2013

Woolworths Limited and Lowe's Companies Inc – proposed acquisition of G Gay & Co stores

Introduction

1. On 4 October 2012, the Australian Competition and Consumer Commission (**ACCC**) announced its decision to oppose the proposed acquisition of assets associated with three stores owned by G Gay & Co by a joint venture between Woolworths Limited and Lowe's Companies Inc (the **Joint Venture**) (the **proposed acquisition**). The ACCC decided that the proposed acquisition would have or be likely to have the effect of substantially lessening competition in the relevant 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 a number of sources including the information provided by the parties to the proposed acquisition (the **merger parties**) and information arising from market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.

Public Competition Assessment

3. To provide an enhanced level of transparency 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 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. It also alerts the public to circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or is likely to change from previous assessments.
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 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.

The parties

The acquirer: Woolworths Limited and Lowe's Companies Inc (Joint Venture)

8. Woolworths Limited (**Woolworths**) is an Australian and New Zealand retailer. Its operations include the Woolworths and Safeway supermarkets, the Big W chain of discount department stores and petrol and liquor retail chains.
9. Lowe's Companies Inc (**Lowe's**) is a US-based retailer of hardware, building supplies, and home improvement products. Lowe's operates over 1,600 stores throughout the United States and Canada.
10. On 25 August 2009, Woolworths announced the formation of a joint venture with Lowe's in Australia (the **Joint Venture**)
11. The Joint Venture's businesses include Danks Holdings Pty Limited (**Danks**) and Masters Home Improvement Australia Pty Ltd (**Masters**).
12. Danks is an Australian wholesaler of hardware products and related services. Danks' principal business is the wholesale distribution of hardware, building supplies, home improvement products and related services to independently owned and operated hardware retailers including Danks' member stores and other non-affiliated independent stores. Danks' members operate stores under the banners of "Home Timber and Hardware", "Thrifty Link Hardware" and "Plants Plus Garden Centres." In addition to supplying products at the wholesale level, Danks makes recommendations to its members regarding product pricing and retail strategies, marketing and promotional services.
13. The Joint Venture also owns and operates "Masters" stores, a recent multi-category entrant into the retail hardware, building supplies, and home improvement sector in Australia. At the time of the ACCC's decision, Masters had

opened eight stores in Australia and was in the process of opening a number of further Masters stores.¹

14. The Joint Venture planned to open a Masters store at 25-51 Learmonth Road, Wendouree, Victoria in mid to late 2013 (the **Masters Ballarat Store**) irrespective of the proposed acquisition.²

The target: G Gay & Co

15. **G Gay and Co** comprises a group of companies and assets that are privately co-owned and managed by brothers David Gay and Ross Gay.
16. The three stores owned by G Gay & Co that were the subject of the proposed acquisition consist of the following three multi-category retail stores in Ballarat, which sell a wide range of hardware, building supplies and home improvement products to trade and non-trade customers:
 - Home Timber and Hardware Ballarat, located at 127 Gillies Street, Ballarat;
 - Home Timber and Hardware Wendouree, located at 801 Howitt Street, Wendouree; and
 - Ballarat Building Suppliers, located at 117 Main Road, Ballarat East,

(G Gay & Co Stores).

17. The G Gay & Co Stores operate as part of the Home Timber and Hardware banner group. This means that the G Gay & Co Stores pay membership fees to Danks, which is owned by the Joint Venture, in order to adopt the Home Timber and Hardware brand, marketing materials and promotions. The G Gay & Co Stores offer products advertised in the Home Timber and Hardware marketing materials at or below the advertised prices. Danks also makes recommendations to the G Gay & Co Stores (and other members of the banner group) regarding the product ranges to stock and the prices to offer. The G Gay & Co Stores also acquire a large proportion of products at the wholesale level from Danks, although they also acquire significant volumes of products from wholesalers other than Danks or directly from manufacturers.

Industry Background

Types of products

18. Hardware, building supplies and home improvement products supplied in the Ballarat area generally fall into a range of product categories, including for illustrative purposes:
 - i. tools and hardware
 - ii. bathroom, laundry, and kitchen materials
 - iii. plumbing supplies
 - iv. paint, homewares, and decor
 - v. garden supplies and watering equipment

¹ At the date of publication of this Public Competition Assessment, Masters had 29 stores in operation in Australia.

² The Masters Ballarat Store opened in August 2013.

- vi. timber and building supplies
- vii. lighting and electrical
- viii. outdoor living (furniture, BBQs, play equipment, pool and spa care)
- ix. flooring
- x. storage and organisation
- xi. window furnishing.

19. Within each category there are a number of different products. Within each product category there are a number of different product brands. There are also a number of models within a particular product brand which are differentiated on the basis of particular product attributes.

Types of customers

20. Market inquiries indicated that customers acquire hardware, building supplies and home improvement products for different purposes:

- **Trade customers** – typically purchase hardware, building supplies and home improvement products primarily for use in a business, such as to complete construction, renovation or other projects for which they have been employed; and
- **non-trade customers** – typically purchase hardware, building supplies and home improvement products for personal or domestic use, primarily for “do-it-yourself” (DIY) projects.

21. There is substantial overlap between the products acquired by trade customers and those acquired by non-trade customers.

22. Trade customers range in size from individual tradespeople, small and medium sized locally based trades businesses or home building businesses, and large commercial and residential construction companies which operate over a wide geographic area.

23. Both trade and non-trade customers primarily purchase these products from retail outlets. These are described in more detail in the Market Definition section.

Multi-category retailers in the Ballarat area

24. Multi-category retailers of hardware, building supplies and home improvement products tend to stock a large number of product categories, but within any product category they tend to have a smaller number of brands (and within a particular brand, they have a smaller number of models) compared with a specialist retailer.

25. At the time of the ACCC’s decision, **Bunnings** was the largest multi-category retailer of hardware, building supplies and home improvement products in the Ballarat area, followed by **G Gay & Co Stores** which was then Bunnings’ closest competitor and the second largest multi-category store in Ballarat. **Dahlsens** also provided a multi-category product offer.³ The planned **Masters** Ballarat Store, once opened, was to be a large multi-category retailer of hardware, building

³ But see the discussion on Dahlsens below.

supplies, and home improvement products, and would compete with the above retailers.

Bunnings

26. Bunnings is a multi-category retailer of hardware, building supplies, and home improvement products, operating a number of large and small format stores in Australia.⁴
27. In the Ballarat area, Bunnings has two stores:
- Bunnings Warehouse, a multi-category hardware, building supplies, and home improvement store with trade and non-trade offers located at 306 – 312 Creswick Road, Ballarat; and
 - Bunnings Trade Centre, a trade outlet located at 66 Warringa Drive, Mitchell Park.

Dahlsens

28. Dahlsens is a family-owned business which comprises a number of medium to large format multi-category stores retailing hardware, building supplies, and home improvement products catering to trade and non-trade customers at 18 locations in Victoria and New South Wales at the time of the ACCC's review.
29. Dahlsens operated a multi-category hardware, building supplies, and home improvement store with trade and non-trade offers located at 63 Albert Street, Sebastopol, Ballarat. Based on information available to the ACCC during the course of its review, the ACCC considered it unlikely that Dahlsens would impose an effective competitive constraint on Bunnings, G Gay & Co and Masters in the future, at least with respect to the non-trade customers.
30. In January 2013, Dahlsens dismantled its retail shop front, and significantly reduced its trading hours and range of products available at its Ballarat location, which, in effect, substantially decreased its offering to non-trade customers.

Small independent multi-category retailers

31. In addition to the merger parties and market participants mentioned above, there are two small independent multi-category hardware, building supplies, and home improvement retailers in the Ballarat area: Robert Sims Supplies and Ross Street Building Supplies. These stores are not members of any banner group. Although they supply a range of products from more than one product category, they each have significantly fewer product categories and a smaller range of products within each category, than the G Gay & Co Stores and other multi-category stores.

Category specialist retailers

32. There are a number of category specialist retailers in the Ballarat area which focus on offering a single or small number of product categories. For example: *Reece*

⁴ Bunnings is part of the Wesfarmers Group, an ASX-listed Australian company with business activities across a range of industries. In addition to hardware, building supplies, and home improvement, the Wesfarmers Group operates supermarkets, liquor stores, discount department stores, office supply stores, and fuel and convenience stores.

sells a range of plumbing products, *Total Tools* sells a range of power tools, *Haymes Paint* sells a range of paint and painting products and Whiteheads Timber supplies timber and a small range of other products.

33. These retailers generally offer a greater number of brands and models within a product category than the multi-category retailers. They also typically offer a greater number of models for a given brand of products, including a range of functionality and price points. This gives consumers a greater choice of products along a price-function-quality continuum than that which is usually available at multi-category retailers. Multi-category retailers usually offer a selection of products at different price points within a product category, but a smaller choice of brands and a narrower choice within a particular brand.

General retailers

34. In Ballarat, retail stores such as Big W and Kmart stock a limited range of hardware, building supplies and home improvement products, alongside their offers of several other categories of retail products such as clothing, food and toys. The range of hardware, building supplies and home improvement products offered by these stores comprise a limited number of brands and models within a limited number of product categories.

Wholesale suppliers

35. Hardware, building supplies, and home improvement retailers purchase products from wholesalers and/or manufacturers, either directly or with the support of buying groups. Wholesale suppliers include Danks and Mitre 10. Buying groups negotiate purchases of hardware, building supplies and home improvement products collectively on behalf of their members, who are typically independent retailers with a strong customer base in their respective markets. Buying groups in Australia include Natbuild and HBT.

The proposed transaction

36. The Joint Venture proposed to acquire assets associated with the business operated at the three G Gay & Co Stores from G Gay & Co, including inventory, goodwill and intellectual property, but excluding the land and buildings on which the stores are located.

Review timeline

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

Date	Event
13-Feb-2012	ACCC commenced review under the Merger Review Process Guidelines.
27-Feb-2012	Closing date for submissions from interested parties.
09-Mar-2012	ACCC requested further information from the merger parties. ACCC timeline suspended. Former proposed decision date for announcement of ACCC's findings of 22 March 2012 delayed.
03-May-2012	ACCC received further information from the merger parties. ACCC

Date	Event
	timeline recommenced.
16-May-2012	ACCC published a Statement of Issues outlining preliminary competition concerns.
01-Jun-2012	Closing date for submissions relating to Statement of Issues.
22-Jun-2012	ACCC requested further information from the merger parties. ACCC timeline suspended.
19-Sep-2012	ACCC received further information from the merger parties. ACCC timeline recommenced.
04-Oct-2012	ACCC announced it would oppose the proposed acquisition.

Market inquiries

38. The ACCC conducted market inquiries with a range of industry participants, including competitors, customers, input suppliers, industry bodies, other regulatory agencies and other interested parties. Submissions were sought in relation to the substantive competition issues.

Statement of Issues

39. The ACCC published a Statement of Issues on 16 May 2012 identifying a number of competition issues. The ACCC stated its preliminary view that the proposed acquisition may raise competition concerns in the retail market for the supply of hardware and home improvement products in the Ballarat area, with multi-category retailers being the closest competitors of each other in this market.

40. The Statement of Issues is available on the ACCC website (www.accc.gov.au) at the mergers register.

Future with/without the proposed acquisition

41. 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 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 would be likely to substantially lessen competition in any relevant market.

42. The ACCC’s market inquiries indicated that even if the Joint Venture did not acquire the G Gay & Co Stores:

- The Joint Venture would still become a new entrant multi-category retailer of a full-range of hardware and home improvement products through its Masters store model competing to attract non-trade and trade customers in the Ballarat area. It would also continue to be a wholesaler of hardware products to independent retailers of hardware, building supplies, and home

improvement products through Danks. Each of these outcomes would occur with or without the proposed acquisition.

- G Gay & Co was likely to continue to own and operate the G Gay & Co Stores and continue to retail a range of hardware, building supplies, and home improvement products to non-trade and trade customers in the Ballarat area. The ACCC considered that G Gay & Co would be likely to source products on a wholesale basis and marketing support from either Danks⁵ or another banner group or buying group.
- The G Gay & Co Stores and the planned Masters Ballarat Store would compete with each other for the retail supply of multi-category hardware, building supplies, and home improvement products in the Ballarat area for the foreseeable future.

43. The ACCC also considered that the G Gay & Co Stores represent a means by which an alternative banner group or hardware chain could enter the Ballarat area as a competitor to other hardware chains. The proposed acquisition would remove this avenue for new entry which may lead to greater competition compared to the likely future without the proposed acquisition.

Areas of overlap

44. The Joint Venture planned to open the Masters Ballarat Store on Learmonth Road, Wendouree, a suburb of Ballarat in mid to late 2013. Upon completion of this store, the Joint Venture and the G Gay & Co businesses would have overlapped in the retail supply of a range of hardware, building supplies and home improvement products to consumers, comprising trade and non-trade customers, in the Ballarat area. Since the ACCC's decision, the Masters Ballarat store opened in August 2013.

Competition Analysis

Market definition

Retail distribution channels

45. As discussed in paragraphs 18-19, there are a number of products that fall in the category of hardware, building supplies, and home improvement products and these are supplied to consumers through a number of retail distribution channels – multi-category retailers of various sizes, category specialist retailers, and general retailers.

46. Retailers in the Ballarat area compete for customers through their total product and service offering. The product offering includes the number of product categories and the breadth and depth of brands and models within each product category. The service offering includes the location, format, size and opening hours of the store, as well as services it provides, such as specialist advice, delivery, value-added services such as cutting materials to size, and convenient

⁵ If the G Gay & Co Stores were to continue their association with the Danks “Home Timber and Hardware” banner group in the absence of the proposed acquisition, after the commencement of the Masters store in Ballarat, they would effectively obtain some of the wholesale supplies and promotional support/materials from their retail competitor.

payment methods (e.g. trade accounts). Different retailers put varying degrees of emphasis on each of these factors so as to differentiate themselves from rivals. The extent of differentiation across the different retail channels affects the closeness of competition between the different retail channels.

47. For instance, multi-category retailers compete to attract trade and non-trade customers who wish to purchase multiple categories of products during a single shopping visit, or over a number of visits for particular repair jobs or projects. Multi-category retailers also give customers the option of browsing and selecting from other product categories in addition to the ones they initially came to shop for, much like a supermarket.
48. Multi-category hardware, building supplies and home improvement retailers are able to reduce travel and search costs for those customers who wish to purchase products from a number of related product categories compared with the option of making multiple trips to numerous single-category or general retailers. They also offer efficiencies in payment terms which may be particularly attractive to trade customers who purchase from multiple product categories.
49. In contrast, customers of category specialists typically have a very specific or narrow purpose for their shopping trip and value the ability to compare a wide range of brands and models within a brand for a particular product category. Category specialist retailers meet the needs of these types of customers by efficiently supplying a wider choice of brands and models within a product category than multi-category retailers.
50. On the other hand, general retailers focus on customers who are doing a multi-purpose shopping trip and value the ability to purchase a number of unrelated products during that trip. For example, a customer may purchase some nails while also shopping for clothing or toys. The key benefit offered by these general retailers is the number of unrelated product categories rather than the number of related product categories or the breadth or depth of the offering within a particular category, with many of the products offered being at the “entry level” of functionality.
51. In light of these issues, the ACCC found that customers who value the option of shopping from multiple product categories in one retail store, were not likely to switch, in significant numbers, to shopping from individual category specialist or general retailers in response to an increase in prices in the multi-category stores post-acquisition. The ACCC’s market inquiries also indicated that, in the event of an increase in prices post-acquisition, category specialists in Ballarat were unlikely, in the foreseeable future, to expand their product range, obtain the relevant retailing expertise and increase store size in a manner to supply multiple product categories to an extent that would competitively constrain the incumbent multi-category retailers.
52. Market inquiries also indicated that the multi-category retailers in Ballarat primarily and most frequently focus on the offerings of other multi-category retailers when they determine their product ranges and customer service offerings, set prices for the items they stock, and subsequently reduce prices of these products pursuant to ‘price-beating policies’, often called ‘**price guarantees**’. While multi-category hardware retailers check and respond to the prices of hardware, building supplies and home improvement products offered by category specialist and general

retailers, this usually is limited to products that are identical (for instance, their brand and size) to the ones stocked in their own stores.

53. Therefore the ACCC considered that the extent of differentiation between the retail offering of multi-category, specialist and general retailers was such that specialist and general retailers were not a sufficiently close demand side or supply side substitute to multi-category retailers to be included in the relevant product market.⁶

Customer types

54. The ACCC considered whether there are separate customer markets for retail sales of hardware and home improvement products to trade and non-trade customers.
55. Industry participants drew a distinction between trade and non-trade customers based on their different purposes and methods of payment for purchases of hardware, building supplies and home improvement products. For example, some customers purchase these products for use in a business through a credit account held with the store, while others purchase them for domestic or personal use using cash or personal credit cards.
56. The preferences and expectations of trade and non-trade customers with regard to a retailer's product range and service offerings also vary and depend, in part, on the purpose of the customer's shopping occasion. For example a customer's preferences may vary depending on whether that customer is shopping for a few items to make DIY repairs or improvements in their home, to top-up supplies or is ordering bulk products for a project.
57. In general terms, non-trade customers value the ability to shop from a number of product categories at competitive prices with a degree of personalised service. While many tradespeople also value the ability to purchase a range of products from one store, market inquiries revealed that trade customers are time-sensitive, valuing consistently prompt advice and service, the ability to obtain a trade account or store credit, and to obtain reliable supply and delivery of products to worksites.
58. Notwithstanding these differences, market inquiries revealed there was a significant degree of overlap in the products that are purchased by trade and non-trade customers, and that most retailers, including the merger parties, compete to attract both trade and non-trade customers by offering product ranges, customer service and prices which suit both categories of customers, typically within the same store location.
59. Therefore, the ACCC's view was that these two categories of customers were not sufficiently differentiated to be in separate markets for the purpose of this particular competition analysis.

⁶ This finding differs from the Statement of Issues, in which the ACCC indicated that its preliminary view was that the relevant market was the retail supply of hardware and home improvement products, with multi-category retailers being the closest competitors of each other.

Geographic dimension

60. The ACCC found that non-trade and trade customers value the convenience of retail stores that are located close to their homes and/or places of work because purchases are often regular and, especially for non-trade customers, low-value relative to transport and other transaction costs. The ACCC found that the vast majority of trade and non-trade customers of hardware, building supplies and home improvement products in the Ballarat area were unlikely to travel outside the Ballarat area for such products in response to competition effects arising from the proposed acquisition.
61. Market inquiries indicated that deliveries of hardware, building supplies and home improvement products are sometimes made into the Ballarat area by suppliers located outside the Ballarat area, such as from Melbourne and Geelong. These deliveries are made to trade customers. However, market inquiries revealed that such deliveries are infrequent due to distance and delivery costs. In addition, the ACCC found that supply from outside the Ballarat area was often the result of a supply contract with a large trade customer that covered a broader area, for example the state of Victoria, of which the Ballarat area was one part.
62. The ACCC formed the view that it would be unlikely that hardware, building supplies and home improvement retailers located outside the Ballarat area would increase supply into the Ballarat area in response to competition effects arising from the proposed acquisition, such that these retailers would provide a strong competitive constraint.
63. The ACCC recognised that large chains, including Bunnings and Masters, and banner groups, including Home Timber and Hardware (the banner group to which the G Gay & Co stores belong) also compete with each other and other retail chains on a broader geographic basis, given that many price and product offers of competing retail chains are standardised across multiple geographic areas ('**global offers**'). The ACCC considered the effect of this constraint when assessing the proposed acquisition. The ACCC found that while aspects of competing chains' global offers are taken into account by retailers in Ballarat, locally-based offers are important to the competitive process.
64. Therefore, consistent with the ACCC's approach in previous matters, the ACCC considered that a local retail market surrounding the target stores was the relevant market in which to consider the likely competition effects arising from the proposed acquisition. In previous competition analyses in the hardware industry, the ACCC has indicated that it considers each retail market on a case-by-case basis, closely examining competition within the 5km radius of the target and including participants up to 10km away where local circumstances meant this was appropriate.
65. The exact size of the geographic market (in km distance) was not determinative of the competition analysis in this matter. Market inquiries indicated that customers in regional areas such as those surrounding Ballarat would travel up to approximately 20- 30 kilometres specifically to shop at a hardware, building supplies, and home improvement store; while retailers would occasionally deliver to trade customers' work sites up to 20-30 kilometres from their retail store. The ACCC therefore evaluated the level of competitive constraint imposed by multi-category retailers located within 20-30km of the G Gay & Co Stores, as retailers within this distance would represent geographic substitutes for the G Gay & Co

Stores. Noting that the nearest multi-category hardware store outside of Ballarat is almost 50 kilometres away, the ACCC considered that the relevant geographic market in which to consider the competition effects of the proposed acquisition was the greater Ballarat area.

Conclusion on retail markets⁷

66. The ACCC considered that the competitive effects of the proposed acquisition should be assessed in the context of the retail market for the supply of multi-category hardware, building supplies and home improvement products in the Ballarat area.⁸

Market concentration

67. The ACCC formed the view that the proposed acquisition would increase market concentration and remove a close and effective competitive constraint on other multi-category retailers in the Ballarat area in the foreseeable future.

68. At the time of the ACCC's decision, there were two large multi-category retailers in the Ballarat Area supplying trade and non-trade customers: Bunnings and G Gay & Co.

69. Bunnings was the largest multi-category retailer in the Ballarat area, with two stores supplying a large range of hardware, building supplies and home improvement products, and a range of customer services, to both trade and non-trade customers.

70. After Bunnings, the next largest multi-category retailer was G Gay and Co, operated as a single business across the three G Gay & Co Stores in Ballarat, supplying hardware, building supplies and home improvement products and services to trade and non-trade customers from each of these retail sites.

71. At that time, the Masters Ballarat Store was scheduled to open in mid to late 2013, irrespective of whether the proposed acquisition proceeded.

72. Bunnings, the G Gay & Co Stores were and, with the planned Masters Ballarat Store, would be the only multi-category retailers supplying a large range of hardware, building supplies and home improvement products and services to trade and non-trade customers in the Ballarat area.

73. As discussed above, the ACCC did not consider that it was likely that Dahlsens in Ballarat would offer an effective competitive constraint on these retailers. Dahlsens now only offers products to trade customers. As explained in paragraph 30, the ACCC considers that this has significantly diminished the level of competitive constraint that Dahlsens offers in the relevant market as it no longer offers a store front, product range, opening hours and service levels that would appeal to the large non-trade section of the relevant market.

⁷ The relevant markets identified above are the result of an assessment applying a purposive approach. Relevant markets in the same or similar industries may differ between various merger reviews, based on case-specific information regarding the substitutability of products and their geographic locations.

⁸ This refers to the supply of a range of product categories that are within the hardware, building supplies and home improvement definition set out above.

74. In the Ballarat area, small independent multi-category hardware retailers are:
- Robert Sim Building Supplies, a hardware, building supplies, and home improvement store with trade and non-trade offers located at 102 Humffray Street, South Ballarat; and
 - Ross Street Building Supplies, a hardware, building supplies, and home improvement store with trade and non-trade offers located at 3 Ross Street, Ballarat.
75. For the reasons outlined at paragraph 80, the ACCC concluded that the small independent multi-category hardware retailers would not be likely to competitively constrain the acquirer post-acquisition.
76. Therefore, the ACCC concluded that the proposed acquisition would reduce the number of large multi-category retailers in the Ballarat area in the future, from three to two.

Removal of a vigorous and effective competitor

G Gay & Co is a vigorous and effective competitor

77. Information and documents obtained by the ACCC in the course of its review indicated that G Gay & Co is a vigorous and effective competitor in the relevant market. The ACCC considered that G Gay & Co would be likely to continue to be a vigorous and effective competitor in the relevant market in the likely future without the proposed acquisition.
78. The ACCC considered that being a member of the 'Home Timber and Hardware' banner group assists the G Gay & Co Stores by providing the buying power and advertising, promotional and branding support necessary to compete effectively with Bunnings and the new Masters Ballarat Store. That being the case, the ACCC also noted that membership with the 'Home Timber and Hardware' banner group allows the G Gay & Co Stores the autonomy to set prices, product offerings and service levels independently of, or alongside of the banner group offer. Members are also able to obtain wholesale supply from sources other than Danks. The ACCC noted that the G Gay & Co Stores, though currently supplied by the Joint Venture, have other wholesale supply options to enable them to compete at the retail level.
79. The ACCC found that the G Gay & Co Stores have a strong brand name and are highly competitive for trade and non-trade customers in the Ballarat area due to their prices, product range, promotions, service and convenient locations. In particular:
- **Product offering** – the G Gay & Co Stores stock a wide range of hardware, building supplies, and home improvement products. While a large proportion of these are sourced from Danks, G Gay & Co also sources significant volumes of products from other suppliers, some of which are not available from Danks.
 - **Price** – the G Gay & Co Stores' price offering to trade and non-trade customers comprises a combination of prices recommended by Danks to its 'Home Timber and Hardware' banner group members and price

offerings determined independently by G Gay & Co (for products sourced from Danks or other suppliers).

The ACCC found that competitors in the Ballarat area respond to the prices offered by the G Gay & Co Stores by reducing their prices, either by matching and then beating the prices offered by the G Gay & Co Stores upon requests by customers, or through more permanent price reductions.

- **Service** – market inquiries indicated that the G Gay & Co Stores have a strong reputation for providing a superior level of service to trade customers (especially) and non-trade customers in the relevant market, including reliable and timely delivery, sourcing products to meet specific customer requirements, three well-positioned store locations in the Ballarat area, convenient opening hours, knowledgeable staff, loyalty programs and accounts for trade customers.
- **Promotional activity** – the G Gay & Co Stores' primary form of promotional activity is through participation in 'Home Timber and Hardware' promotions, including monthly catalogues. G Gay & Co also independently arranges promotions, such as radio advertisements and in-store discounts for hardware, building supplies, and home improvement products offered by the G Gay & Co Stores.

Market inquiries also revealed that trade and non-trade customers in the Ballarat area associate strongly with the G Gay & Co brand, as distinct from the Home Timber and Hardware brand.

- **Convenient locations** – market inquiries indicated that the three G Gay & Co Stores are conveniently located and could be easily accessed by trade and non-trade customers located in the Ballarat area.

80. The ACCC's market inquiries revealed that competitors in the Ballarat area respond to competition from the G Gay & Co Stores, and that G Gay and Co is the closest competitor to Bunnings in Ballarat.
81. In the absence of the proposed acquisition, upon the opening of the Masters Ballarat Store, there would be a significant overlap between the G Gay & Co Stores and Masters in terms of product range and customer types.
82. With Masters entering the market, G Gay & Co and Bunnings would have incentives to continue to compete to attract both non-trade and trade customers through competitive pricing, service and product offerings. These interactions would be significant for competition in the relevant market in the likely future without the proposed acquisition.

Likely effects of the removal of G Gay & Co as an independent competitor

83. Were the proposed acquisition to proceed, the Home Timber and Hardware brand offering would likely have continued, but an independent offering from G Gay & Co would not. However, with the acquisition, the Joint Venture would be likely to operate the G Gay & Co Stores and the Masters Ballarat Store in a way that would allow it to maximise profit across both businesses. The Joint Venture would not have an incentive for the G Gay & Co Stores to compete, aggressively or otherwise, with the new Masters Ballarat Store, and vice versa.

84. The competition lost as a result of the proposed acquisition would not be likely to be replaced by competition between Bunnings and Masters, or by smaller participants in the market.
85. The ACCC considered that the small multi-category retailers would not be likely to impose a strong competitive constraint in the market post-acquisition. These retailers have much smaller product ranges, and are not members of a retail chain. Therefore, the ACCC considered that they would be unlikely to offer and advertise product ranges, prices and promotions that would competitively constrain the larger multi-category retailers across a wide range of their products and for all types of customers. While some of these competitors are members of buying groups, their product and service offerings, as well as their retail sites, would need to be substantially expanded in order to effectively constrain the total product offerings of the main multi-category retailers.

Likelihood of new entry or expansion by existing competitors

86. The ACCC assessed the likelihood of new entry or expansion in the relevant market and whether any such entry or expansion would act as a sufficient constraint on the Joint Venture and Bunnings to alleviate the ACCC's competition concerns in relation to the proposed acquisition.
87. The ACCC's market inquiries indicated that the entry of a new, large-scale competitive independent multi-category offering is unlikely.
88. The availability of sites for retail stores in Ballarat is unlikely to be a critical barrier to entry. However, while Ballarat is a growing regional area, the ACCC considered that the entry of another multi-category hardware, building supplies and home improvement product retailer, or expansion by a currently limited range incumbent (such as an existing small multi-category or specialist retailer), is unlikely in the foreseeable future, given that Bunnings (two stores), G Gay & Co (three stores), Masters (one store from August 2013) and Dahlsens (albeit one trade only store) are already present in the Ballarat area.
89. In addition, the incumbents' price guarantees increase the risk and thus may deter entry that may otherwise be profitable. Even if the new entrant offered significantly lower prices, given the price guarantees, there would be a significant risk that the new entrant would not achieve sufficient volume of profitable sales to make entry worthwhile. Therefore, the presence of these stores is likely to constitute a substantial barrier to entry or expansion.
90. The ACCC formed the view that it would be unlikely for there to be entry of a competitive multi-category hardware, building supplies and home improvement retail offering in the Ballarat area of a sufficient scale and in a sufficiently timely manner to replace the competition lost from G Gay & Co stores so as to prevent a substantial lessening of competition was unlikely.

Conclusion

91. The ACCC found that the proposed acquisition would likely result in the removal of a vigorous and effective competitor in the retail market for the supply of multi-category hardware, building supplies, and home improvement products to trade and non-trade customers in the Ballarat area. The ACCC considered that the

competitive constraint imposed by G Gay and Co in the relevant market was not likely to be replaced by existing competitors or by the threat of new entry.

92. On the basis of the above, the ACCC decided that the proposed acquisition would be likely to have the effect of substantially lessening competition in the market, in contravention of section 50 of the Act.