

# Consumers' needs—a focus of mergers



A major focus for the Australian Competition and Consumer Commission in the past year has been mergers that directly affect consumers' hip pockets, especially significant decisions made in industries like petrol, hardware, telecommunications and electrical appliances.

KEY TO THE Australian Competition and Consumer Commission's analysis and decision making has been the capacity to make reasoned judgments about the state of competition, not only on current facts but as it might unfold in the medium to longer term.

This has been challenging, requiring intense scrutiny of issues and markets, but is critical to preserving healthy competition for the benefit of all 22 million Australians.

In a challenging economic environment, the ACCC has also been flexible in its process but rigorous in its investigation and analysis.

The merger law has proved to be adaptable and robust in dealing with a variety of issues.

Mergers affect not only the present but the future state of competition, so capacity in the law for forward-looking analysis that predicts the likely competitive effects of a merger is critical. This is particularly significant in a changing economic climate, where 'failing firm' claims become more frequent. In clearing the smallgoods merger of Primo and Hans, for example, it was a decisive factor that, but for the merger, the target company would go into liquidation and many of its assets leave the market.

The recent decision to oppose Caltex's proposed acquisition of over 300 retail petrol sites from Mobil shows how the merger law works to address local competitive concerns for each service station, as well as bigger picture issues like the potential impact of the merger on the weekly petrol price cycle that occurs generally across most metropolitan areas.

A prospective analysis has been critical in examining issues in several matters. For example, a key element in the ACCC's decision not to oppose Vodafone's acquisition of Hutchison was that current competition from Vodafone and Hutchison in the mobile communications area was unlikely to continue in the foreseeable future. Without the merger, each firm was likely to be

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an increasingly weak competitor, leading to longer-term detrimental effects on competition.

In considering Woolworths' and Lowe's joint acquisition of Danks wholesale hardware business, the ACCC was concerned that, given Woolworths' intention to establish retail

hardware outlets in the future, control of Danks would be likely to raise significant competition concerns for the retail competitors that relied on Danks for supplies. For this reason, the ACCC accepted undertakings aimed at protecting these competitors, often independent retailers, from discriminatory practices—enhancing their ability to find new suppliers if they were not satisfied with a Woolworths-controlled Danks.

This matter illustrates the clear need for likely future events to be taken into account in the decision-making process.

International liaison has also played an important role in the merger review process in 2009. For example, when examining Pfizer's proposal to divest assets in the United States in the animal health care industry to address concerns about its proposed acquisition of Wyeth, the ACCC consulted closely with its counterpart agencies in the United States to ensure that the new owner would be able to compete in Australia.

In a somewhat turbulent economic environment, the ACCC's merger review process has continued to operate well, providing a timely and transparent process while offering flexibility when needed.

The ACCC consults widely on merger matters in forming its views and flexibly engages with parties where appropriate to find practical, workable solutions to competition issues arising from mergers. Nevertheless, when the ACCC is not satisfied that a proposed solution will alleviate its concerns, it will not hesitate to oppose a transaction outright.

With the shadow of the global financial crisis drifting slowly away and activity picking up, the ACCC expects to be increasingly active in the mergers sphere in 2010. Australians can be confident that the law and its processes are robust and responsive to the increasingly diverse range of merger issues.