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The Treasury

SUBMISSION TO THE COMPETITION POLICY REVIEW 2014

Executive Summary

- As the “creeping acquisition” provisions did not apparently, in the Australian Competition and Consumer Commission’s view, enable the Commission to mount a winnable case in the 2013 acquisition by Woolworths of the Hawker SupaIGA, then the provisions are ineffective.
- The former Dominance test may be more effective in dealing with creeping acquisitions than the current “substantial lessening of Competition” test.
- The time has come for the Act to deal directly with the creeping acquisitions problem rather than using an indirect and ineffective approach of attempting to deal with the problem by tinkering with the market definition provisions.

Friends of Hawker Village Incorporated (FoHV) is a community association established by local residents on 26 June 2010. Its aims are to enhance the residential, suburban, social and environmental qualities of the Hawker catchment area, through participation, in a non-political environment, by community discussion on and input to planning and land management in the ACT as it impacts on local residents, including through advocacy to the ACT and Commonwealth Governments, and advocacy to and representation before tribunals and courts.

The Creeping Acquisitions Provision

In 2012, the FoHV became aware that Woolworths were, subject to the ACCC not objecting, intending to acquire the Hawker Supa IGA. The FoHV believed that this acquisition would contravene the “creeping acquisitions” of section 50 of the Competition and Consumer Act 2011 (the Act). It is noteworthy that the ACCC conducted a detailed review of the proposed acquisition and that it retained the service of a Market Research firm to conduct a consumer survey.

The major national supermarket firms (Woolworths and Coles) face effective competition in the local area from each other and Aldi along the dimension of price. SupaIGA, however, was the only supermarket providing effective competition to those majors along the dimension of grocery choice and locational accessibility and convenience. The sale

substantially lessened the competition currently provided in the latter dimensions, which were known to be very important to the local population.

The FoHV's submissions to the Commission, dated 26 Oct 2012 and 17 Jan 2013, are at friendsofhawkervillage.wordpress.com/submissions/. Ultimately, despite our objections and after a thorough examination of the proposal, the ACCC decided not to object. The Commission's media release is at <https://www.accc.gov.au/media-release/accc-to-not-oppose-the-proposed-acquisition-of-hawker-sup-a-iga-by-woolworths>

The Commission's public competition assessment is on their Public Register at <http://registers.accc.gov.au/content/index.phtml/itemId/1119961/fromItemId/751043>.

The FoHV are of the view that, as the "creeping acquisition" amendments did not apparently, in the Commission's view, enable the Commission to mount a winnable case, then the provisions are ineffective. As outlined below, Woolworths hold a very significant position in the relevant Markets and, arguably, their position is at or approaching one of dominance that would have satisfied the prohibition against mergers that existed following the 1977 amendments. Ironically, it appears that the former Dominance test may be more effective in dealing with creeping acquisitions than the current "substantial lessening of Competition" test.

It is the view of the FoHV that the time has come for the Act to deal directly with the creeping acquisitions problem rather than using an indirect and ineffective approach of attempting to deal with the problem by tinkering with the market definition provisions.

In the paragraphs that follow, we outline the origin of our concerns and the facts which we believe demonstrate the acquisition should have been stopped.

OVERVIEW OF THE HAWKER SHOPS CASE

Hawker Village is a medium-sized shopping centre located roughly in the middle of south Belconnen, at the junction of two minor arterial roads, Belconnen Way and Springvale Drive. The ACT Government regards the catchment area of the Hawker Centre as comprising the four surrounding suburbs of Hawker, Weetangera, Page and Scullin. The shopping centres in the last three are largely moribund, two having lost their supermarket and the third having little more than a convenience store. In the past decades, local shopping centres have declined in favour of Hawker and the other larger centres.

The Hawker Supa IGA was one of only two independent supermarkets in the District of Belconnen, the other being a SupaBarn in the north-east. The Hawker SupaIGA was attractive for its convenience, ease of parking and range of different items which are not stocked by Woolworths and Coles. It was valued by those who found the range and quality of goods and services offered by Aldi, Coles and Woolworths to be unsatisfactory. Its catchment was, therefore, larger than the four surrounding suburbs.

The Hawker SupaIGA was doubled in size several years ago to become a full-line supermarket, which made it more competitive as it then carried a good range of products, and prices were lower than previously and lower than the few remaining small supermarkets in local centres. It filled a gap in the market, catering to those who, for various reasons, were

unable or preferred not to shop at one of the cheap end supermarkets but could not afford to shop comprehensively at a small local supermarket. This market is no longer serviced.

COMMENTS ON ACQUISITION OF HAWKER SUPA IGA BY WOOLWORTHS.

The Relevant Markets

The Hawker shopping centre draws the majority of its customers from the surrounding suburbs. There is no supermarket in any of the adjoining suburbs, other than the convenience store in Scullin. The Hawker shops have a significant advantage in that there is ample parking.

The local catchments for the Hawker IGA, Woolworths at Kippax and Coles at Jamison overlapped in part. While there are Coles, Woolworths and Aldi at the Belconnen Mall, these stores at the other centres are generally considered preferable because of parking difficulties at the Mall, including the distance that purchases often need to be moved to get to a vehicle.

It was considered that the relevant markets for ACCC consideration were:

- a) a local market for supermarket retailing in the area surrounding the Hawker SupaIGA;
- b) a statewide (either ACT or NSW/ACT) market for supermarket retailing;
- c) a statewide (either ACT or NSW/ACT) market for the retail sale of packaged liquor for off-site consumption
- d) a statewide (either ACT or NSW/ACT) market for the procurement of products sold in supermarkets by supermarket retailers.

Range

The Hawker SupaIGA was a full-line supermarket that offered a broad range of products that, in number, was similar to that offered by Woolworths or Coles. In addition, there were a number of differences in the composition of the range of products from those offered by Woolworths or Coles; for example, the SupaIGA, through Metcash, was well placed to supply local and specialty products from suppliers that are either too small or otherwise unable to supply the larger supermarket chains. Further, Woolworths, Coles and Aldi stock a large number of in-house brands. Replacement of IGA by one of Woolworths and Coles was thought to and has reduced product choice in the catchment, thus removing one element of competition.

Choice

Price is not the only consideration in assessing competitiveness. Choice of product and choice of shopping environment are also important to many and, for some, more important than price. Unfortunately, both Coles and Woolworths have forgotten this. Since Aldi entered the market, the two majors have engaged in a race to the bottom, putting price ahead of choice, quality and other considerations, in an effort to retain their market share. This surely indicates that the market is saturated.

Nevertheless, the ACCC based its decision on a shoppers' survey that inevitably showed that most people only used the Hawker IGA for top-up shopping, preferring to do their main

shopping where prices were lower. This decision ignored the needs of those people who valued the Hawker SupaIGA for its different product range and service, and who were prepared to pay a little more for those features.

Consequences for competition of the acquisition.

There have been a number of adverse competition consequences arising from the sale:

1. The acquisition of the Hawker SupaIGA by Woolworths resulted in the only supermarket offering full-line competition to the two major chains, in at least the south Belconnen area, being removed from the market as an independent competitor and, thus, removing a constraint on the already significant market power of those two chains.
2. The acquisition removed one of the only two SupaIGAs from the Canberra-Queanbeyan region and a major competitor store from the market. It weakened the IGA brand in the Canberra area and, thus, the constraint it placed on Woolworths and Coles, giving them increased market power in at least the local market. The other SupaIGA is at Karabar in Queanbeyan and owned by the vendors of the Hawker supermarket;
3. Only one large independent store, other than Aldi, will remain in the Belconnen area – SupaBarn at Kaleen (the viability of which is likely to be damaged by the proposed construction of a 1,500 square metre Woolworths at Giralang, one kilometre away);
4. The continued viability of the remaining few local supermarkets at Florey and Cook could be undermined, leading to demise of those supermarkets and possibly the local centres in which they are located;
5. Small shops in the group centres, such as butcher and baker, might become less viable with an extra major supermarket in south Belconnen drawing demand away;
6. Given the increasing role of in-house brands by Woolworths and Coles and their concurrent ceasing to sell some brands, the acquisition has removed a major outlet for those brands. This has adversely affected the competitive position of those brands in wholesale markets by giving Woolworths greater market power.

Accordingly, Friends of Hawker Village strongly submitted that the proposed acquisition should not proceed as it was a significant creeping acquisition.

CONCLUSION

Since Woolworths took over the Hawker supermarket, the supermarket profile in the District of Belconnen (population about 90,000) is:

- Large full-line Woolworths supermarkets at Charnwood, Hawker, Kippax and the Belconnen Mall;
- Smaller Woolworths supermarkets at Dunlop (800 sq.m.) and proposed at Giralang (1,500 sq.m.);
- Large full-line Coles supermarkets at Belconnen Mall and Jamison Plaza;
- SupaBarn at Kaleen (1,850 sq.m);
- Aldi at Kippax, Jamison and the Belconnen Mall;

- Other independents at Holt (IGA 422 sq.m.); Florey (SupaXpress 860 sq.m.); Scullin (5-Star 319 sq.m.) and Cook (Friendly Grocer 577 sq.m.) as well as several similarly-small independents in northern suburbs.

For residents of south Belconnen, the largest independent supermarket is the 860 sq.m SupaXpress in Florey. This is a local centre and is not located on arterial roads that give easy access. For residents of north Belconnen, the largest independent supermarket is SupaBarn at Kaleen. The location of the latter store makes it unsuitable for consideration as within the catchment of south Belconnen. These residents have, therefore, lost access to a reasonably-priced alternative to the big three supermarkets while concurrently Woolworths has been able to increase its commanding presence in the relevant market.

Accordingly, FoHV strongly recommends that the Act be amended to deal more effectively with the growing “creeping acquisitions” problem that is having a detrimental effect on competition.

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