



One of the ACCC's roles is to look at whether proposed mergers will substantially lessen competition.

Section 50 of Part IV of the Trade Practices Act prohibits mergers or acquisitions which would have the effect, or be likely to have the effect, of substantially lessening competition in a substantial market for goods or services in Australia, in a state, territory or region.

However, under s. 87B of the Act the ACCC can accept written undertakings that address competition concerns from a party proposing a merger.

For example, a company might undertake to sell some of its assets to reduce the anti-competitive effect of any merger.

2. **Queensland Medical Laboratory by Mayne Group Ltd—announced 22 July 2002.**

The ACCC considered the relevant market was the approximately state-based markets for the supply of pathology services (excluding pathology services provided to public in-patients) in Queensland, New South Wales and the Northern Territory. The ACCC found the acquisition was unlikely to substantially lessen competition in any market.

because the market share figures of the proposed acquisition will not exceed the ACCC thresholds, the availability of substitutes and the countervailing power at the hands of the health funds.

5. **Radclin and East Melbourne Medical Imaging by Medical Imaging Australia—announced 2 October 2001.**

MIA is the largest supplier of radiology and nuclear medicine services in Australia. It encompasses a diverse range of practices from

Mergers

—the case for and against coming together

Unopposed acquisitions

1. **Astrazeneca's dental injectable anaesthetic assets by Dentsply (Australia) Pty Ltd—announced 28 August 2002.**

The parties distribute dental local anaesthetics throughout Australia. Astrazeneca was involved in the manufacturing process as the only Australian-based registered manufacturer of dental local injectable anaesthetics. The ACCC decided that the relevant market was the national market for the supply of dental local injectable anaesthetics.

Despite the fact that the merged entity's market concentration exceeded the ACCC concentration thresholds, the ACCC concluded that the merged entity's ability to exercise market power was likely to be constrained by the existence of high levels of imports, the likelihood of new entry and the countervailing power of customers.

3. **Port Macquarie Medical Imaging by Mayne Group Ltd—announced 2 April 2002.**

PMMI is a major provider of medical imaging services in the mid-north coast of NSW. Although PMMI is the largest provider of diagnostic imaging services in the region, the ACCC decided not to oppose Mayne's acquisition of PMMI as Mayne does not have any presence in diagnostic imaging in the region. The acquisition represents a change of ownership but not a change of the number of competitors.

4. **Wagga Wagga Day Surgery by Calvary Health Care Riverina Inc—announced 19 March 2002.**

The ACCC considered the relevant market to be the supply of surgical services to patients in the south-western region of NSW. The ACCC concluded that the proposed acquisition was unlikely to result in a substantial lessening of competition

general X-ray clinics to full-modality radiology practices. MIA was listed on the Australian Stock Exchange and consists of 115 member practices around Australia. Radclin services 20 locations throughout greater Melbourne, performing all imaging modalities, including MRI, nuclear medicine and CT.

The ACCC's concerns regarding an increase in market concentration were mitigated by the fact that public hospitals do compete against private radiology practices for private patient referrals. In addition, there were also a number of diagnostic imaging groups with multiple practice locations in the southern and eastern Melbourne metropolitan areas where the competitive overlap between MIA and Radclin was at its greatest.

Opposed acquisition

Benson Radiology by Medical Imaging Australia—announced 23 May 2001.

Benson Radiology is one of three main private radiology practices operating in the Adelaide region along with Perrett Medical Imaging and Dr Jones & Partners. MIA owns Perret Medical Imaging.

The ACCC conducted extensive market inquiries and found that the proposed acquisition would lead to a substantial lessening of competition for the provision of radiology services to private patients in the Adelaide region. It found during the course of its inquiries that there was limited competitive overlap between private radiology and public radiology departments.

Opposed, then allowed

Australian Hospital Care by Mayne Nickless Limited—opposed 16 January 2001; allowed 29 January 2001.

If this merger had gone ahead without modification Mayne would have had market shares close to 90 per cent on the Gold Coast and 40 per cent in Melbourne.

After the ACCC announced that it proposed to oppose the merger, Mayne offered undertakings to divest four hospitals. This meant the merged company's market share of private hospital beds in metropolitan Melbourne would be reduced to around 30 per cent and that the current market concentration levels on the Gold Coast were maintained. It also meant that health insurers would have an option other than Mayne when negotiating Hospital Purchaser Provider Agreements in each of the areas.

Authorised merger

The ACCC can also grant an authorisation of a merger under Part VII of the Act. (See article on authorisations and notifications on p 15)

On 12 September 2002 the ACCC announced that it would not authorise the merger of Australian Pharmaceutical Industries and Sigma, as there was insufficient public benefit to outweigh the harm to competition. The ACCC had previously announced on 17 April 2002 that it would oppose the proposed merger between API and Sigma under the s. 50 test.

In making the decision the ACCC considered that the merger would have created a company with 60 per cent of the pharmaceutical wholesaling market in NSW, Victoria and Queensland and more than 50 per cent in other states. Together with Mayne, the only other major wholesaler, the two companies would account for almost 90 per cent of the market.

The ACCC said the scope for parallel conduct between the merged entity and Mayne would be significant. Over time, the real possibility of decreased service levels and higher prices to pharmacists exists and there is a danger that this could be transferred and passed on to consumers in the form of higher prices in some instances.

Loyalty arrangements, such as banner groups and financial guarantees for pharmacists, which effectively tie pharmacists to wholesalers, limit the likelihood of entry by new competitors into the market.

The deterioration in competitive pressures as a result of the merger would be a major public detriment.

API and Sigma had claimed there would be benefits from the merger which outweighed any detriment, including efficiency gains, continued community access to pharmaceuticals, enhanced community health services and reduced Commonwealth expenditure on the Pharmaceutical Benefits Scheme.

However, while accepting there would be some public benefit the ACCC decided that the benefits did not outweigh the harm to competition.

The ACCC was not satisfied that proposed undertakings given by the applicants would resolve key competition concerns or that they would shift the balance of public benefit and public detriment.

During the authorisation process the ACCC received over 120 submissions from a diverse range of interested parties including pharmacists, pharmaceutical manufacturers, pharmaceutical wholesalers, logistics providers, financial analysts and government agencies.

See the ACCC's *Merger guidelines*, hard copy available for \$10 from <publishing.unit@acc.gov.au> or (02) 6243 1143. Also available on our website at <<http://www.acc.gov.au>>.