Answer to question on notice:

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE ASIC ANNUAL REPORT (SECOND REPORT) 2019

QoN: ASIC31QON

Question:

Dr LEIGH: Thanks very much, Chair. Ms Chester, I want to start with the issue that was raised by a couple of my colleagues around common ownership. Given Australia's pretty opaque share registry, the only way in which we really get to see common owners is when they lodge substantial holding disclosures. But the threshold for that is currently five per cent. Has ASIC given thought to reducing that threshold, particularly in light of the fact that, in the United States, an entity holding more than $100 million in assets is required to make full disclosure? **Ms Court:** Thanks for the question, Deputy Chair. I'll hand across to my fellow colleague Commissioner Cathie Armour.
Ms Armour: The substantial shareholding threshold is set by the parliament. It is not a threshold that—
Dr LEIGH: Yes, I know that.
Ms Armour: We think it's a very important matter that there's adequate transparency of substantial shareholding.
Dr LEIGH: Yes, I know that too. Have you given thought to reducing it?
Ms Armour: We have not made any recommendations about the substantial shareholding level, at least recently.
Dr LEIGH: That wasn't my question. I'm asking you a high-level policy question. You are a key regulator in this space. Common ownership is an issue which is concerning people across the parliament. Have you turned your mind to the question as to whether we might better understand the anti-competitive effects of common ownership if we brought down that five per cent threshold?
Ms Armour: Just to be clear that we're sort of talking about the same things and I'm not misunderstanding you, the substantial shareholding laws apply when somebody has a relevant interest. So that does pick up connections between parties. Whether that degree of connection is sufficient for the areas that you're concerned about, I think is an important question at the moment. At the moment, we haven't had a matter come to us that suggests there's a problem in this area. We'd be happy to look at anything in particular that you'd like to raise with us on that.
Dr LEIGH: It's a burgeoning international literature. There are papers suggesting impacts on consumers in the airline sector and in the banking sector in the United States. But all of this research is enabled by researchers having a clear understanding of the shareholders, and, as Ms Hammond pointed out beforehand, understanding the shareholders who might carry the most weight when they vote. I'd urge you to look into the issue and come back to us with a more substantive response.

Answer:

ASIC considers that changing the threshold for substantial holding notice obligations is a matter for Government, as change can only occur through law reform.

The requirements for shareholders to disclose relevant interests in voting power in excess of 5%, and thereafter movements of 1%, are a long-standing feature of the Australian corporate landscape. Shareholders are required to disclose their direct and indirect holdings as well as those of their associates. These obligations underpin market integrity by requiring holders of substantial share parcels to be known to the market to inform participants about who may have influence over the affairs of any relevant company.

The Australian threshold is:

- the same as those in the United States, Hong Kong, EU countries and New Zealand. Each of these countries have 5% thresholds; and
- within the range of thresholds in the United Kingdom and Canada of respectively 3% and 10%.

<u>Portfolio holdings reporting</u>

The securities laws in the United States requires institutional investment managers with portfolios in excess of US$100m in listed equity securities to provide quarterly holdings reports, that is, irrespective of what percentage of equities in any listed entity are held. This requirement is separate to the US's substantial holding notice obligations. For completeness we note the Securities and Exchange Commission is presently considering increasing the investment size threshold to $3.5bn (from $100m) to modernise and reduce compliance burdens associated with the rule.

In Australia, we do not have obligations equivalent to those imposed on institutional investment managers. However, legislation has been passed which requires certain superannuation trustees to comply with portfolio holdings disclosure obligations. When this law was introduced the requirements was for "look through" disclosure of holdings, including disclosure of underlying investments held indirectly via non-associated third parties. As a result of industry feedback, the obligations were amended to, in effect, require disclosure of direct holdings only. As the Government has not yet made supporting regulations to set out the way in which this disclosure is to be made, ASIC has accordingly used its powers under the Corporations Act to defer the obligations.

<u>Other transparency obligations</u>

In Australia, persons (irrespective of whether they are a shareholder themselves) can obtain information from the share and/or beneficial owner registers maintained by companies under the Corporations Act. Persons accessing this information must pay the fees prescribed by the law.

Anti-competitive effects of common ownership

This is primarily a matter for ACCC. We note the comments of Mr Sims from ACCC at the Standing Committee of Economics hearing on 23 October 2020 relating to whether a 10% stake would provide control.

ASIC considers that while reducing substantial holding notice thresholds may result in increased transparency, this would need to be balanced against the increased regulatory burden and cost to the Australian financial market and its participants.