EXECUTIVE OFFICE

Australian Competition & Consumer Commission

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

29 January 2009

Mr John Hawkins
Committee Secretary
Senate Standing Committee on Economics
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Mr Hawkins

Inquiry into Aspects of Bank Mergers

Please find attached a submission from the Australian Competition and Consumer Commission (ACCC) in relation to the Inquiry into Aspects of Banking Mergers.

If you have any queries in relation to the information provided, or would like the ACCC to provide further information on any aspect, please do not hesitate to contact me on 02 6243 1124.

Yours sincerely

Brian Cassidy
Chief Executive Officer

Australian Competition & Consumer Commission

ACCC submission

Senate Economics Committee

Inquiry into aspects of banking mergers

January 2009

Contents

Introduction **1**

Overview **2**

Merger related competition provisions and the ACCC's role **3**

Section 50 3
ACCC merger review process 4
Remedies 6
    Court remedies 6
    Undertakings 6

Application of section 50 to banking mergers **7**

Recent banking mergers 7
    Commonwealth-BankWest 7
    Westpac-St George 9
Undertakings and banking mergers 11

Conclusion **12**

Introduction

1. On 24 November 2008, the Senate referred the following matters to the Senate Standing Committee on Economics (the Committee) for inquiry and report by 26 February 2009:

   - the economic, social and employment impacts of the recent mergers among Australian banks;

   - the measures available to enforce the conditions on the Westpac Banking Corporation/St George Bank Limited merger and any conditions placed on future bank mergers;

   - the capacity for the Australian Competition and Consumer Commission to enforce divestiture in the banking sector if it finds insufficient competition;

   - the adequacy of section 50 of the Trade Practices Act 1974 in preventing further concentration of the Australian banking sector, with specific reference to the merits of a 'public benefit' assessment for mergers;

   - the impact of mergers on consumer choice;

   - the extent to which Australian banks have 'off-shored' services such as credit card and loan processing, information technology, finance and payroll functions;

   - the impact 'off-shoring' has on employment for Australians; and

   - alternative approaches to applying section 50 of the Trade Practices Act 1974 in respect of future mergers, with a focus on alternative approaches to measuring competition.[1]

2. The Committee invited written submissions on these issues.

3. The Australian Competition and Consumer Commission (the ACCC) welcomes the opportunity to provide its views to the Committee. In particular, the ACCC considers that it is well placed to provide information on competition issues related to banking mergers given its recent experience in conducting reviews of the proposed acquisitions of St George by Westpac and of BankWest by Commonwealth Bank.

[1] http://www.aph.gov.au/senate/Committee/economics_ctte/bank_mergers_08/info.htm

Overview

4. The ACCC is an independent statutory authority established in 1995. The ACCC promotes competition and fair trade in the market place to benefit consumers, business and the community. It also regulates national infrastructure industries. Its primary responsibility is to ensure that individuals and businesses comply with the Commonwealth's competition, fair trading and consumer protection laws.

5. The ACCC enforces consumer protection and fair trading laws contained within the *Trade Practices Act 1974* (Cth) (TPA). The ACCC also regulates markets where competition is less effective, for example, the energy and telecommunications markets.

6. One of the ACCC's roles is to enforce the competitive conduct provisions contained in Part IV of the TPA. Part IV prohibits certain types of conduct including price fixing, misuse of market power and entering into exclusive dealing or other arrangements that have the effect, or are likely to have the effect of substantially lessening competition in a market. Part IV also prohibits the acquisition of shares or assets by a person if the acquisition has the effect, or is likely to have the effect of substantially lessening competition in a market, pursuant to section 50. These provisions are a primary source of regulation of the competitive conduct and competitive structure of the banking sector. However, the banking sector is also subject to other regulators. For example, the Treasurer also has a role in determining whether certain mergers in the banking sector should be allowed to occur, pursuant to the *Financial Sector (Shareholdings) Act 1998*.

7. This submission focuses on the ACCC's role in assessing mergers in the banking sector pursuant to section 50 of the TPA.

8. The ACCC believes that section 50 of the TPA is generally an appropriate test to examine the competitive implications of mergers in the banking sector, and its administrative framework is effective in assessing transactions in this sector.

9. The Committee may note that the ACCC has recently provided a submission in response to the Discussion Paper released by the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs in relation to creeping acquisitions, indicating the ACCC's support for some amendment to section 50 of the TPA to deal with creeping acquisition issues. The ACCC considers that such an amendment will enhance the competition test contained within section 50.

Merger related competition provisions and the ACCC's role

10. The ACCC recognises that mergers and acquisitions are important for the efficient functioning of the economy. They allow firms to achieve efficiencies, such as economies of scale or scope, and diversify risk across a range of activities. They also provide a mechanism to replace the managers of underperforming firms.

11. In the vast majority of mergers, sufficient competitive tension remains after the merger to ensure that consumers and suppliers are no worse off. Indeed, in many cases consumers or suppliers benefit from mergers. In some cases, however, mergers have anti-competitive effects. By altering the structure of markets and the incentives for firms to behave in a competitive manner, some mergers can result in significant consumer detriment.

Section 50

12. Section 50 of the TPA prohibits mergers that would have the effect, or be likely to have the effect, of substantially lessening competition in a market.

13. Generally, the ACCC takes the view that a lessening of competition is substantial if it creates or confers an increase in market power on the merged firm and/or other firms in the relevant market that is significant and sustainable. For example, a merger will substantially lessen competition if it results in the merged firm being able to significantly and sustainably increase prices.

14. The ACCC's assessment is not limited to a consideration of the impact on price alone. In assessing the effects of a transaction on competition, the ACCC also considers a range of other potential manifestations of market power including whether the acquisition would be likely to result in:

    - lowering of quality of products without a compensating reduction in price
    - reduction in range or variety of products
    - lower customer service standards, and/or
    - changes in any other parameter relevant to competition in the market.

15. The ACCC's approach in assessing a merger is to compare the likely state of competition in future with the merger (the factual) and the likely state of competition in the absence of the merger occurring (the counterfactual). This involves taking into account what is likely to occur if the proposed merger under assessment does not take place. For example, a relevant consideration might be whether the target firm will continue to operate as a separate entity, or whether it will be acquired by a different acquirer.

16. Section 50(3) requires the following non-exhaustive list of matters (or 'merger factors') to be taken into account when assessing whether a merger would be likely to substantially lessen competition:

(a) the actual and potential level of import competition in the market

(b) the height of barriers to entry to the market

(c) the level of concentration in the market

(d) the degree of countervailing power in the market

(e) the likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins

(f) the extent to which substitutes are available in the market or are likely to be available in the market

(g) the dynamic characteristics of the market, including growth, innovation and product differentiation

(h) the likelihood that the acquisition would result in the removal from the market of a vigorous and effective competitor

(i) the nature and extent of vertical integration in the market.

17. These matters – or 'merger factors' – provide insight as to the likely competitive pressure the merged firm will face following the merger and the possible competitive effects of the merger.

18. The ACCC's approach to examining mergers closely follows international practice. In November 2008, the ACCC issued Merger Guidelines, which update its approach to examining mergers pursuant to section 50.[2]

ACCC merger review process

19. Merger parties have two avenues available to have a merger considered and assessed by the ACCC:

- on an informal basis – where parties can seek the ACCC's view on whether a merger proposal is likely to breach section 50 and therefore whether the ACCC would bring proceedings in the Federal Court to restrain the parties from consummating a merger; or

- by an application to the ACCC for formal clearance[3] – where, if granted, this will provide merger parties with legal protection from court action under section 50.

---

[2] http://www.accc.gov.au/content/index.phtml/itemId/809866

20. A third avenue available to merger parties is an application to the Australian Competition Tribunal (the Tribunal) for authorisation of a merger. Here, authorisation may be granted if the Tribunal is satisfied that the proposed merger is likely to result in such a benefit to the public that the merger should be allowed to occur. In making such an assessment, the potential competitive detriment resulting from the merger is weighed against the potential public benefits.

21. Both the formal clearance process, and the process by which merger authorisation applications are made directly to the Tribunal were introduced following the introduction and passage of the Trade Practices Legislation Amendment Act (No. 1) 2006.[4]

22. In practice, the only avenue utilised by merger parties is the informal process. The ACCC has not received any applications for formal clearance nor has the Tribunal assessed any applications for authorisation of a merger since the introduction of these processes. To date all banking mergers considered by the ACCC have been examined under the informal process.

23. It is important to note that there is no obligation on merger parties to seek clearance from the ACCC, informal or otherwise, before they go ahead with their transaction. It is quite possible for mergers and acquisitions to occur without notification to the ACCC. In such cases, parties run the risk of subsequent action, including divestiture and penalties, if the ACCC determines after the event that section 50 has been contravened. Further, the ACCC has the power to seek an injunction to prevent an acquisition if it considers it will breach section 50. Accordingly businesses generally (including in the banking sector) widely engage in the practice of seeking informal clearance from the ACCC, prior to completing a merger transaction, if there are any perceived risks that the transaction may affect competition. The ACCC endeavours to facilitate the clearance process through administration that is flexible, responsive and timely. The ACCC also provides confidential views to merger parties who are proposing a merger that is not yet in the public domain.

24. The ACCC's approach to merger assessments is set out in detail in the *Merger Review Process Guidelines*, available on the ACCC's website.[5] The ACCC's processes and approach have been developed in line with international best practice, contemporary views on anti-trust analysis and the ACCC's experiences in assessing the impact of mergers on competition.

---

[3] Subsection 95AC(1) of the TPA.
[4] This amended the TPA in response to recommendations by the Review of the Competition Provisions of the Trade Practices Act (the Dawson review). A number of the Dawson review's recommendations related to the ACCC's consideration of mergers and acquisitions. Before these amendments, the avenues for consideration of mergers and acquisitions were primarily through an informal review system and, to a lesser extent, application to the ACCC for merger authorisation.
[5] http://intranet.accc.gov.au/content/index.phtml/itemId/774883

Remedies

Court remedies

25. If the ACCC considers that an acquisition contravenes section 50 of the TPA and the parties do not agree to modify or abandon the acquisition, the ACCC can apply to the Federal Court for an injunction, divestiture or penalties. Only the ACCC can apply for an injunction and/or penalties for merger matters. Third parties can apply for declarations and/or divestiture (including setting aside the acquisition in certain cases). Any person suffering loss or damage as a result of a merger that breaches section 50 can apply for damages.

Undertakings

26. Pursuant to section 87B of the TPA, the ACCC may accept a written undertaking in connection with a matter in relation to which it has a power or function under the TPA, except Part X. In some cases, merger parties can provide the ACCC with a court enforceable undertaking under section 87B to implement structural (e.g. divestiture), behavioural (e.g. ring fencing) or other measures that alleviate the competition concerns identified by the ACCC.

27. The provision of undertakings is at the discretion of the party giving the undertaking. The structure and content of undertakings offered to the ACCC will therefore be a matter for the party offering the undertaking to determine. However, the ACCC will not accept undertakings if it is not satisfied they address its competition concerns. The ACCC encourages merger parties to carefully consider ACCC feedback on the form and content of proposed undertakings.

28. The ACCC considers that section 87B undertakings play a critical role in administering and enforcing section 50 of the TPA. Accordingly, the ACCC carefully monitors compliance with all undertakings it accepts and will investigate if it identifies any potential non-compliance.

29. If the undertaking is breached, the ACCC may seek orders from the court directing compliance with the undertaking, the giving up of any financial benefit gained from the breach, compensation for any other loss or damage as a result of the breach, or any other appropriate orders. The ACCC will not hesitate to take enforcement action if it considers that an undertaking has been breached, and that court action is the appropriate response in the circumstances. The ACCC has taken action in relation to breaches of undertakings on a number of occasions.[6]

[6] For example, in September 2006 the ACCC commenced proceedings against Alinta Ltd in relation to a breach of an undertaking. The matter was settled by orders settling the litigation by consent of the parties.

Application of section 50 to banking mergers

30. The ACCC examines banking mergers pursuant to section 50 in a manner consistent with assessments of mergers in other industries and in accordance with the principles outlined above.

Recent banking mergers

31. A summary of the ACCC's assessments of mergers involving major banks since 1997 are set out in Attachment A.

32. The ACCC has undertaken two informal merger reviews of proposed acquisitions in the banking sector during 2008[7] of particular interest to the Committee:

- The proposed acquisition of St George Banking Limited by Westpac Banking Corporation (completed in August 2008); and

- The proposed acquisition of BankWest by Commonwealth Bank of Australia (completed in December 2008).

33. Detailed explanations of the ACCC's decisions in relation to these matters were published in Public Competition Assessments (PCAs) which are freely available on the ACCC's website. Copies of these PCAs are included in this submission as Attachments B and C. Brief summaries of the ACCC's decisions are also provided below.

Commonwealth-BankWest

34. On 8 October 2008, CBA announced its proposal to acquire BankWest and St Andrew's from HBOS.

35. On 20 October 2008 the ACCC commenced its review under the Merger Review Process Guidelines and commenced market inquiries.

36. On 10 December 2008, the ACCC announced its decision not to oppose the proposed acquisition. The ACCC was of the view that the proposed acquisition would not be likely to have the effect of substantially lessening competition in any relevant market, in contravention of section 50 of the TPA.

37. The ACCC reviewed the proposed acquisition in the context of several retail banking markets, as set out in Table 1, below.

---

[7] Other acquisitions in the finance sector more broadly have also been reviewed. For example, at the time of making this submission, the ACCC is also reviewing the acquisition of Wizard Home Loans by Aussie Home Loans. In addition, in September 2008, the ACCC decided not to oppose the proposed acquisition of 33% of Aussie Home Loans by the Commonwealth Bank of Australia.

Table 1 Retail banking markets

Product dimension	*Geographic dimension*	*Functional characteristics*
Personal banking markets		
Transaction accounts	Local but price and service competition is predominantly national	Provide day-to-day deposit and payment functionality in the form of cheque books, debit cards, BPay, internet and phone banking.
Deposit/term products	National	Traditional savings instrument with a focus on growth in the capital value of the deposited funds.
Credit cards	National	Short-term unsecured lending product for individual consumers.
Home loans	National	Mortgage lending to individuals for the purpose of acquiring residential property.
Personal loans	National	Lending to individuals for the purposes of purchasing large personal consumption items.
Business banking markets		
SME banking	Local but price and service competition is national	A 'cluster' of banking products encompassing credit products, transaction/cash facilities, merchant acquiring services and banking advice.
Agribusiness banking	Local but price and service competition is national	A 'cluster' of banking products for agricultural businesses with a central element being specialised lending products including very long-term credit instruments.

38. The ACCC's inquiries revealed that BankWest had been a vigorous and effective competitor in retail banking markets, especially for transaction accounts, home loans and saving products. However, after extensive market inquiries and analysis, the ACCC considered that, due to global financial conditions, in the event that the merger did not proceed, it was unlikely that BankWest would continue to be as aggressive in its pricing, product offering and expansion plans. On this basis, it was found that the likely state of competition if the merger occurred would not be substantially lower than the state of competition if the merger did not occur.

39. In the absence of the global financial crisis, and the funding difficulties faced by BankWest's overseas parent company, the ACCC's conclusion may have been different. However, with BankWest no longer capable of competing as aggressively, the ACCC found that it was unlikely that the removal of BankWest as an independent competitor would result in a substantial lessening of competition, relative to the counterfactual, in any of the relevant markets.

40. In reaching this view, the ACCC carefully considered a wide range of competition issues including any potential impact on price and quality of service. It also looked closely at the potential impact within local areas and found that in every local metropolitan, regional and remote area in which branch and ATM overlap between CBA and BankWest arose, there remained a number of alternative competitors with a physical presence in the same suburb - or at least in a major suburb nearby – and regional town centre.

41. A range of interested parties provided responses including competitors, industry and consumer associations, mortgage brokers and interested third parties. The

ACCC sent an ‘open letter’ to banking customers in Western Australia as part of its inquiry process welcoming customers’ views on the proposed acquisition. The focus of the letter was on whether BankWest was considered to be a particularly unique competitor in terms of price and/or quality. Over 50 responses from personal banking customers were received. The ACCC also held discussions and requested information from a range of parties regarding the likely future of BankWest if the acquisition did not proceed. These included the merger parties, HBOS and Lloyds TSB, Australian regulators and other possible buyers of the BankWest business.

Westpac-St George

42. On 13 May 2008 Westpac and St George announced a proposed merger between the two companies. On 30 May 2008, Westpac provided a submission to the ACCC and sought informal clearance for the transaction.

43. On 13 August 2008, following an extensive investigation, the ACCC announced its decision not to oppose the proposed acquisition. The ACCC was of the view that the proposed acquisition would not be likely to have the effect of substantially lessening competition in any relevant market, in contravention of section 50 of the TPA.

44. The ACCC reviewed the proposed acquisition in the context of several retail banking markets, as set out in Table 2, below.

Table 2 Retail banking markets

Product dimension	*Geographic dimension*	*Functional characteristics*
Personal banking markets		
Transaction accounts	Local but price and service competition is predominantly national	Provide day-to-day deposit and payment functionality in the form of cheque books, debit cards, BPay, internet and phone banking.
Deposit/term products	National	Traditional savings instrument with a focus on growth in the capital value of the deposited funds.
Credit cards	National	Short-term unsecured lending product for individual consumers.
Home loans	National	Mortgage lending to individuals for the purpose of acquiring residential property.
Personal loans	National	Lending to individuals for the purposes of purchasing large personal consumption items.
Hybrid personal loans (margin loans)	National	Flexible lending provided to individuals for the purpose of acquiring shares or investing in funds or for drawing on the equity in assets.
Business banking markets		
SME banking	Local but price and service competition is national	A 'cluster' of banking products encompassing credit products, transaction/cash facilities, merchant acquiring services and banking advice.
Equipment finance	National	Includes lease finance products and hire-purchase products. The lease provider purchases capital equipment and leases it to the business for an agreed term, commonly two to five years.
Agribusiness banking	Local but price and service competition is national	A 'cluster' of banking products for agricultural businesses with a central element being specialised lending products including very long-term credit instruments.

45. Following an initial assessment of the matter, involving enquiries with a wide range of competitors, customers and other interested stakeholders, on 23 July 2008 the ACCC published a Statement of Issues which outlined some preliminary competition issues the ACCC had identified. In particular, the ACCC identified wealth management products supplied by the merging entities – known as 'wrap platforms' – as an area of possible concern. The ACCC's preliminary view was that the acquisition was unlikely to result in competition concerns in retail banking markets.

46. Following the issue of the Statement of Issues, the ACCC conducted further analysis and enquiries in relation to the issues, and concluded that, while St George Bank was a relatively innovative and dynamic competitor with a strong focus on customer service, other competitors to the merged entity which remain in the market would continue to play a similar role.

47. The ACCC considered that competition in retail banking markets provided by the other major banks and regional banks along with credit unions, building societies and niche players, would be sufficient to prevent the merged firm significantly

increasing its market power after the acquisition, and accordingly would not substantially lessen competition in the relevant markets.

48. A range of interested parties provided input to the ACCC's decision in this matter including competitors, industry and consumer associations, downstream users of products (including mortgage brokers and financial advisors) and interested third parties. The ACCC also conducted two confidential customer surveys — one for personal banking customers and the other for business banking customers. The ACCC received 240 responses to the personal banking survey and 25 responses to the business banking survey. Similar to the ACCC's general market inquiries process, responses were used to assist with the ACCC's understanding of personal and business banking habits and to identify areas of customer concern for the ACCC to explore further. The survey results were not treated as necessarily reflective of the banking habits or concerns of the general population but were used as a starting point for the ACCC's further inquiries.

Undertakings and banking mergers

49. As with any merger matter, it is open to the ACCC to accept undertakings to alleviate any competition concerns the ACCC has with a proposed banking merger.

50. The ACCC has not accepted any undertakings in relation to recent banking mergers it has reviewed.

51. In both the Westpac-St George merger and the Commonwealth-BankWest merger, since the ACCC concluded that no substantial lessening of competition was likely to arise, the ACCC did not accept any undertakings. This is because when assessing a merger, the ACCC does not seek to improve competition beyond the pre-merger levels, but rather the acceptance of any undertakings is aimed at remedying any potential harm attributable to the merger.

52. The ACCC understands that certain conditions were placed on the Westpac-St George merger by the Treasurer.[8] This was unrelated to the ACCC's assessment of the matter and these conditions are not monitored or enforced by the ACCC.

[8] http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/116.htm&pageID=003&min=wms&Year=&DocType=0

Conclusion

53. The ACCC believes that section 50 of the TPA provides an appropriate test to examine the competitive implications of mergers in the banking sector, and its administrative framework is effective in assessing transactions in this sector.

54. The ACCC can oppose banking mergers that substantially lessen competition in breach of section 50 of the TPA. Where the ACCC considers competition concerns are likely to result from a merger, it may accept court-enforceable undertakings (including divestiture undertakings) pursuant to section 87B of the TPA.

55. The ACCC's views on recent banking mergers have been that they would be unlikely to substantial lessen competition. The ACCC has therefore not opposed these transactions and has not accepted any undertakings from the merging parties. However, these decisions were based on the particular facts of each case, and are not necessarily indicative of the ACCC's views on any future matter. In each case, the key issue is to assess the extent to which competition could be reduced as a result of the transaction, and whether sufficient competitive constraints would remain to prevent a significant increase in the market power of remaining firms.

Attachment A

ACCC reviews of mergers involving the major banks

The banking sector has evolved throughout the period during which the ACCC has reviewed banking mergers. As such, the ACCC’s views in relation to market definition have evolved over time to take account of, for example, new technology and trends in consumer behaviour.

Year	Parties involved	ACCC’s decision
2008	Commonwealth Bank and BankWest	Not opposed (see discussion from paragraph 34)
2008	Westpac and St George	Not opposed (see discussion from paragraph 42)
2000	Commonwealth Bank and Colonial	Not opposed subject to certain undertakings[9]. The main areas of competitive overlap between the Commonwealth Bank and Colonial were in retail banking markets in New South Wales and Tasmania. The ACCC's market inquiries identified several areas of retail banking where the proposed merger would be likely to result in a substantial lessening of competition in both Tasmania and NSW. Those areas related to deposit / term products in Tasmania, transaction accounts in both NSW and Tasmania, and small and medium enterprise banking in both NSW and Tasmania. The undertakings accepted from the parties addressed the ACCC's concerns
1997	Westpac and Bank of Melbourne	Not opposed subject to certain undertakings[10].

[9] The merger was not opposed subject to the merging parties undertaking to maintain certain conditions including access to ATM and EFTPOS networks and ensuring that the benefits of pricing, service levels and product range in metropolitan markets were also available to regional consumers

[10] The merger was not opposed subject to the merging parties undertaking to maintain certain conditions including access to ATM and EFTPOS networks and maintaining branch opening hours and the preservation of rights for certain classes of customers

		The ACCC concluded that in the Victorian deposits market there was sufficient non-bank competition (from, for example, cash management trusts) that offer viable product alternatives and so competition is not likely to be substantially lessened as a result of the merger. In the national market for home loans, the ACCC concluded that competition from non-bank financial institutions has forced interest rates down to a competitive level, and that this would be likely to continue after the merger. In the Victorian market for personal loans, the ACCC considered that the market was not highly concentrated and banks are constrained by non-bank providers such as finance companies, credit unions and motoring organisations. In the Victorian small business banking market, the ACCC concluded that while the market was highly concentrated, BML only had a small share. The ACCC concluded that the Victorian market for transaction accounts was highly concentrated and barriers to entry were also prohibitively high. The ACCC formed the preliminary view that competition was likely to be substantially lessened in the transaction accounts market in Victoria but after taking into account the enhanced access to electronic networks, arising from the undertakings given, it considered that damage to competition in that market would be minimised.

Public Competition Assessment

10 December 2008

Commonwealth Bank of Australia - proposed acquisition of BankWest and St Andrew's Australia

A Introduction

1. On 10 December 2008, the Australian Competition and Consumer Commission (**ACCC**) announced its decision not to oppose the proposed acquisition of Bank of Western Australia Ltd and St Andrew's Australia Pty Ltd by Commonwealth Bank of Australia (**proposed acquisition**). The ACCC was of the view that the proposed acquisition would not be likely to have the effect of substantially lessening competition in any relevant market, in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).

2. The ACCC formed its view on the proposed acquisition on the basis of the information provided by the merger parties and information arising from its 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.

B Public competition assessment

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:

    - a merger is opposed;
    - a merger is subject to enforceable undertakings;
    - the merger parties seek such disclosure; or
    - a merger 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 is considered to raise issues of interest to the public.

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 market to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change, because of developments.

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 its own merits.

7. Many of the ACCC's decisions will 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. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

C The parties

The acquirer – Commonwealth Bank of Australia (CBA)

8. CBA is the largest retail bank in Australia by market capitalisation, valued at approximately $42 billion. CBA's principal business activities include:

   - *personal banking*: transaction, saving/term products, home loans, personal loans, credit cards and hybrid personal loans;
   - *business banking*: small to medium enterprise (SME) banking services, agribusiness, lending and deposit products, equipment finance and merchant acquiring services;
   - *corporate and institutional banking*: includes the provision of a range of financial services to corporate and institutional customers;
   - *wealth management*: through its Colonial First State and First Choice brands, the provision of funds management;
   - *insurance*: through its CommInsure brand, the provision of a range of insurance products; and
   - *stockbroking*: through its CommSec brand, the provision of online-discount stockbroking services.

9. CBA operates the largest branch and ATM network throughout Australia.

The target – Bank of Western Australia Ltd (BankWest)

10. BankWest is an Australian retail bank primarily based in Western Australia. Since 2003, BankWest has been a wholly-owned subsidiary of HBOS Australia, which is wholly owned by HBOS plc (**HBOS**). It is one of HBOS Australia's four businesses.

11. BankWest's parent company, HBOS, is a major UK-based bank providing retail, business and corporate banking, insurance and investment services.

12. BankWest's principal business activities include:

- *personal banking*: transaction accounts, saving/term products, credit cards, home loans and personal loans; and

- *business and corporate banking*: SME banking services, agribusiness, and corporate banking.

13. BankWest operates a large branch and ATM network in Western Australia and has recently undertaken significant branch and ATM expansion in New South Wales, Victoria and Queensland.

The target - St Andrew's Australia Pty Ltd (St Andrew's)

14. St Andrew's is a specialist provider of wealth management and insurance products. St Andrew's began operations in Australia in 1998 and is located in Western Australia, New South Wales, Victoria and Queensland. St Andrew's also distributes wealth management and insurance products through financial advisors, BankWest branches, telemarketing and online.

15. St Andrew's has more than $2 billion in funds under management.

D Industry background

16. For general industry background, the ACCC refers readers to the Public Competition Assessment released in relation to its 13 August 2008 decision not to oppose the acquisition of St George Bank Limited by Westpac Banking Corporation. This document is available on the ACCC's website at www.accc.gov.au/publiccompetitionassessments.

17. Other recent industry developments relevant to this assessment are discussed briefly below.

Global financial crisis

18. Since July 2007, the global financial crisis has had an impact on the competitive dynamic in banking markets. With the virtual closure of asset securitisation markets and the increased cost of wholesale funds since late 2007, many non-bank lenders who were reliant on wholesale markets for their funding have had to exit the Australian market.

19. Other market players, including smaller authorised deposit-taking institutions (ADIs) with low deposit bases, have had to withdraw from lending in some areas or to some customers.

Australian Government Guarantees

20. In response to the credit crunch, the Australian Government introduced two guarantees – (1) a guarantee on retail deposits; and (2) a wholesale funding guarantee for the debt issues of ADIs.

21. The retail deposit guarantee was announced and came into effect on 12 October 2008. At the time of the announcement, the guarantee was not capped and was set to apply to all retail bank deposits. It was later clarified by the Australian Government that the guarantee would apply to all ADIs, including foreign banks with operations in Australia.

22. In addition, after following advice from the RBA, APRA, Treasury and ASIC, the Australian Government introduced a cap on the guarantee of $1 million. Depositors with amounts greater than $1 million can pay a fee to access the guarantee.

23. The guarantee on retail deposits operates for three years and is available for deposits with ADIs which are regulated by APRA. The Australian Government has also announced that other institutions can apply for ADI status so that their depositors can access the guarantee, if they are willing to meet the associated prudential requirements.

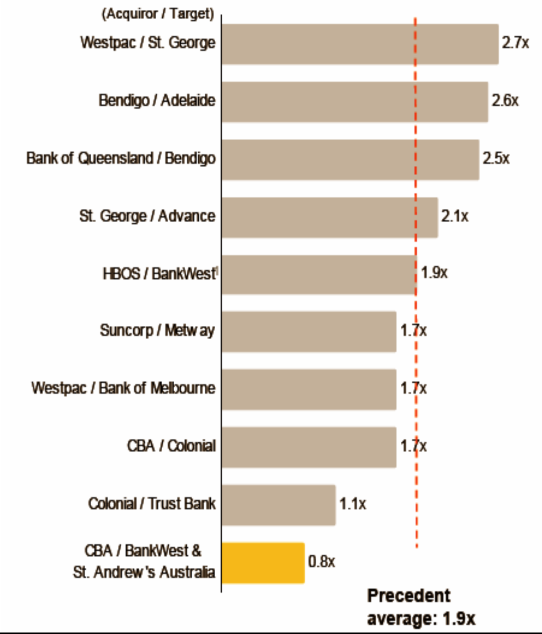
24. The wholesale funding guarantee, which came into effect on 28 November 2008, relates to the issuing of senior unsecured debt instruments — including short-term liabilities (e.g. bank bills and certificates of deposit) and long-term liabilities (e.g. bonds and notes). The guarantee applies to eligible ADIs that register for the scheme. However, for foreign bank branches, such as BankWest, the guarantee only applies in respect of their short term wholesale funding raised from Australian residents with maturities up to the end of 2009.

E Background to the proposed acquisition

25. On 8 October 2008, CBA announced its proposal to acquire BankWest and St Andrew's from HBOS. At the time of announcement, HBOS was experiencing considerable funding pressures despite its announced sale to Lloyds TSB Group plc (Lloyds) (see below). HBOS stated that the transaction would result in an immediate and substantial funding benefit.

26. CBA's offer for the BankWest business is low in the context of the price to book ratios of other Australian banking acquisitions (figure 1).

Figure 1 **Price-to-book values for Australian banking acquisitions**



Source: CBA Investor Pack, 8 October 2008.

Proposed acquisition of HBOS by Lloyds

27. Lloyds, a leading UK-based bank, announced a proposal to acquire HBOS in mid September 2008. The sale was negotiated in the context of the sharp worsening of global financial markets, when the position of HBOS became increasingly vulnerable in terms of share price and funding.

28. On 19 November 2008, Lloyds' shareholders voted in favour of the proposed acquisition. HBOS' shareholders will vote on 12 December 2008. If granted shareholder approval, the acquisition is likely to complete in January 2009. As part of a package of measures introduced by the UK Government to assist financial institutions, the UK Government will acquire a 40% stake of the merged firm.

F Timing

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

Date	Event
20 Oct 2008	ACCC commenced its review under the Merger Review Process Guidelines. Market inquiries commenced.
22 Oct 2008	ACCC requested further information from Commonwealth Bank of Australia. ACCC timeline suspended.
10 Nov 2008	Closing date for submissions from interested parties.
11 Nov 2008	ACCC received further information from Commonwealth Bank of Australia. ACCC timeline recommenced.
10 Dec 2008	Announcement of ACCC's decision.

G Market inquiries

30. The ACCC conducted extensive market inquiries in relation to the proposed acquisition. A range of interested parties provided responses including competitors, industry and consumer associations, mortgage brokers and interested third parties.

31. The ACCC sent an 'open letter' to banking customers in Western Australia as part of its inquiry process welcoming customers' views on the proposed acquisition. The focus of the letter was on whether BankWest was considered to be a particularly vigorous competitor in terms of price and/or service. Over 50 responses from personal banking customers were received.

32. The ACCC also held discussions and requested information from a range of parties regarding the likely future of BankWest if the acquisition did not proceed. These included the merger parties, HBOS and Lloyds, Australian regulators and other potential buyers of the BankWest business.

H The ACCC's merger assessment process – the 'with and without' test

33. Section 50 of the Act prohibits an acquisition if it would be likely to have the effect of substantially lessening competition in a market.

34. In assessing a merger pursuant to section 50 of the Act, the ACCC must consider the effects of the transaction by comparing the likely future state of competition if the transaction proceeds (the "with" or "factual" position) to the likely future state of competition if the transaction does not proceed (the "without" or "counterfactual" position).

35. This with or without test is crucial to the ACCC's assessment of this matter. The ACCC has received compelling evidence to suggest that the competitive constraint provided by BankWest without the transaction is likely to be different from the constraint they previously provided. This is explored in detail in section J below.

I Market definition

36. The ACCC considered a number of relevant markets under each of the key product areas where the activities of the parties overlapped, in particular, personal banking, business banking, wealth management and insurance.

Retail (personal and business) banking

37. The market definitions adopted by the ACCC for the purposes of assessing this matter are summarised in table 1.

Table 1 **Retail banking markets**

Product dimension	*Geographic dimension*	*Functional characteristics*
Personal banking markets		
Transaction accounts	Local but price and service competition is predominantly national	Provide day-to-day deposit and payment functionality in the form of cheque books, debit cards, BPay, internet and phone banking.
Saving/term products	National	Savings instrument with a focus on growth in the capital value of the deposited funds.
Credit cards	National	Short-term unsecured lending product for individual consumers.
Home loans	National	Mortgage lending to individuals for the purpose of acquiring residential property.
Personal loans	National	Lending to individuals for the purpose of purchasing large personal consumption items.
Business banking markets		
SME banking	Local but price and service competition is predominantly national	A 'cluster' of banking products encompassing credit products, transaction/cash facilities, merchant acquiring services and banking advice.
Agribusiness banking	Local but price and service competition is predominantly national	A 'cluster' of banking products for agricultural businesses with a central element being specialised lending products including very long-term credit instruments.

38. The ACCC has considered the geographic dimension of competition for each of the retail banking markets based on:

- the importance of a physical presence (branch and ATM networks) in consumer choice of provider; and
- the geographic scope of decision making of financial institutions in terms of their product range, prices and service levels.

39. The ACCC considers that there are several banking products for which a physical presence is a key determinant of consumer choice — namely transaction accounts, SME and agribusiness banking. Market inquiries suggested that consumers take account of the physical presence of providers — the presence of a branch in a convenient location and the extent of the ATM network — in choosing between financial institutions for these products. This was also supported by market survey data provided to the ACCC in its consideration of this matter and in its assessment of the Westpac-St George merger.

40. In contrast, the evidence provided to the ACCC suggests that a physical presence is not an important determinant of consumer choice for other retail banking products — namely, saving/term products, credit cards, home loans and personal loans.

41. The ACCC notes there is strong evidence to suggest that price competition in retail banking product markets is almost always national. Market inquiries indicated that most financial institutions manufacture, distribute, market and price products on a national basis. The merger parties provided comprehensive information about their internal processes for developing products and setting prices that provided further support for this.

42. However, in this matter CBA provided some limited examples of varying prices at a state level.

43. Other aspects of the merger parties' service provision, including staffing levels, marketing and branch opening hours, are also centrally determined. In the case of staffing levels, these are set according to a formula based on historic levels of customer demand. Competition for these aspects of the service offering is therefore also national.

44. A more detailed discussion around the relevant product and geographic dimensions of these markets can been found in the ACCC's Public Competition Assessment released in relation to its decision not to oppose the acquisition of St George Bank Limited by Westpac Banking Corporation.

Wealth management and insurance

45. The ACCC did not consider it necessary to reach a definitive view on the appropriate market definition for wealth management and insurance products because it was considered that the proposed acquisition was not likely to raise competition concerns regardless of the market definition adopted.

J Competition analysis

Impact of the proposed acquisition on national retail banking markets

46. It was found that the proposed acquisition would result in the aggregation of the retail banking assets of BankWest and CBA in several national retail banking markets — saving/term products, home loans, credit cards and personal loans.

47. Table 2 illustrates that BankWest holds a modest share in each of the relevant markets.

Table 2 **National market shares (%)**[1]

	Deposit/term products	Home loans	Personal loans	Credit cards
CBA	26.9	18.8	11.6	16.9
Bank West	3.9	2.8	3.9	2.0
Merged entity	30.8	21.6	15.5	18.9

48. However, a number of parties put to the ACCC, that despite BankWest's relatively small presence in these markets, it has played an important role in driving national price competition and innovation. The ACCC has therefore investigated BankWest's role as a vigorous and effective competitor in national retail banking markets.

Has BankWest been a vigorous and effective competitor?

[1] The market share figures are derived from a number of sources. The ACCC considers these figures to be the best estimates available for the purposes of this assessment.

49. Many market participants commented on BankWest's role as a vigorous and effective competitor in retail banking markets. In 2006, BankWest announced a plan to open 160 branches in the eastern states of Australia over a period of 4 years. BankWest also began an aggressive roll out of ATMs outside of Western Australia, including an agreement to supply and operate ATMs in 7-11 stores.

50. Consistent with its strategy of building a national presence, BankWest was targeting growth in its market share across retail banking products. For certain banking products considered to be 'key acquisition priorities', BankWest aimed to offer market leading prices to attract new customers. The ACCC understands that BankWest has offered the market leading prices for transaction accounts (discussed separately below), saving/term products and home loans for most of this year.

51. BankWest's product offering has also been innovative — for example, its 'RateTracker' home loan offers an interest rate set at 1% less than the average of the standard variable rates of the big four banks for the first two years. Similarly, with its service offering, BankWest pioneered open plan layouts for its branches with 'mobile service pods' rather than teller bays and zones for kids including toys and DVDs. BankWest has also adopted extended trading hours, including Thursday night and weekend trading, at many of its branches.

52. In recognition of both its aggressive pricing and innovative product offerings, BankWest has been well recognised in industry awards particularly for its home loan and savings products. BankWest has also been successful in growing its presence in these markets, attracting a share of new and switching customers considerably above its existing market share.

53. The ACCC has also received evidence of competitors responding directly to BankWest's pricing decisions and service model.

54. On the basis of BankWest's pricing behaviour, service model and east coast expansion strategy, the ACCC considers that BankWest has been a vigorous and effective competitor, particularly in the saving/term products and home loan markets.

55. However, as set out in section H, the ACCC must consider the competitive effects of the transaction by comparing the likely future state of competition if the transaction proceeds to the counterfactual — the likely future state of competition if the transaction does not proceed.

56. Despite the role BankWest has previously played in driving retail banking competition, the ACCC has received compelling evidence from a range of parties to suggest that BankWest will not be in a position to continue to compete aggressively or act as a price leader under the counterfactual.

Will BankWest continue to compete aggressively in the absence of the acquisition?

57. The ACCC's view on the counterfactual was informed by discussions with a range of parties, including APRA and the RBA; BankWest and HBOS Australia; HBOS and Lloyds, as well as other parties initially approached to acquire the HBOS Australia assets.

58. Based on the information from these sources, the ACCC has formed the view that the relevant counterfactual in this case is that HBOS/Lloyds would continue to operate the BankWest business in the short to medium term. However, it was found that BankWest's operating model would change considerably under this scenario.

59. The financial situation and risk appetite of HBOS (or a merged Lloyds/HBOS with 40% UK Government ownership) is such that these companies would no longer continue to grow the BankWest business. Not only would this likely see a cessation of the bank's east coast expansion plan, but also the aggressive pricing targeted at growing market share.

60. HBOS Australia and BankWest provided submissions and internal documents that support this view of the bank's likely strategy should it continue to be owned by HBOS. The RBA and APRA also indicated that they did not consider that BankWest would be in a position to provide strong and sustainable competition going forward.

61. The ACCC has investigated the possibility that another buyer might acquire the BankWest assets. Any buyer would need to be in a position not only to raise the purchase price but to repay the approximately than $16 billion in intra-group loans from HBOS.

62. Following inquiries with financial regulators, BankWest's parent company, Australian and overseas banks (including all of those initially approached by HBOS advisors in relation to the sale) and other consortia who may have had an interest in acquiring BankWest, the ACCC concluded that an alternative buyer for BankWest is unlikely in the current funding environment.

63. However, even if another buyer were to acquire BankWest, the ACCC took the view that it is not clear that an alternative buyer would have continued to pursue the aggressive growth strategy adopted by HBOS. The rapid expansion being pursued by HBOS with the BankWest business (160 branches over 4 years), was unprecedented in Australian banking.

64. Information provided by HBOS Australia suggested that the BankWest growth strategy was a function of the parent's business model and its search for ongoing expansion opportunities. It was able to underwrite this growth because:

- the Australian operations are only a small part of its total business (approximately 5%); and
- it was able to offer BankWest access to low cost wholesale funding through its AA credit rating.

65. The ACCC considered that it is unlikely that any new buyer would be willing and able to offer to underwrite such growth going forward, particularly in the absence of a significant improvement in the global funding environment.

66. Given a counterfactual under which BankWest will continue to operate as an independent player but will no longer be the competitive force it once was, the ACCC considered the proposed acquisition was unlikely to substantially lessen competition in the relevant national retail banking markets (including home loans and saving/term products). Given BankWest's relatively modest market share in these markets, and the number of other significant competitors, the ACCC found that it was unlikely that the acquisition of such a small competitor, no longer offering market leading prices, would substantially lessen competition.

67. The ACCC notes that its views regarding the counterfactual are specific to the facts of this particular acquisition. The financial situation of BankWest's UK parent, and the associated changes it is likely to make to BankWest's operating model in the absence of the transaction, have strongly informed the ACCC's conclusions.

68. The ACCC will closely analyse the competition implications of any further proposed acquisitions of regional banks.

Impact of the proposed acquisition on other retail banking markets

Transaction accounts

69. As noted in section I, transaction account markets were considered as local because a physical (branch and/or ATM) presence is still an important determinant of consumer choice of provider.

70. However, it was found that most of the key aspects of the service provision, including product manufacture, price, opening hours and staffing levels, are determined centrally by banks in response to national (or at the narrowest, state) rather than local competitive conditions.

71. The key aspect of local competition relates to the availability of a branch presence. Therefore the ACCC considered the effect of the acquisition in each local market in terms of consumer choice, as well as whether the acquisition would impact on price and service at a national or state-wide level, which would have a flow on effect to every local market in which CBA and/or BankWest is a competitor.

Likely effects on the national elements of decision making for transaction accounts

72. BankWest prices its transaction accounts nationally. BankWest's 'Hero' and 'Zero' products have been the national price leaders in this market over the last year. However, as outlined at paragraph 57 above, under the counterfactual BankWest is unlikely to continue to offer market leading products because HBOS will not be in a position to continue to finance its expansion strategy.

73. BankWest is a relatively small player in terms of its national presence, with a 3.2% share of deposits. Therefore, the ACCC found that the proposed acquisition by CBA was unlikely to have a significant effect on banks national prices or service levels for transaction accounts compared to the counterfactual.

Potential for Western Australia-specific price increases

74. As noted at paragraph 41, CBA has submitted some examples to the ACCC of revisions to product prices on a state basis, including waiving transaction account fees for their Western Australian consumers (if their account is linked to a CBA savings account). CBA acknowledged this was in response to the competitive threat posed by BankWest.

75. Given this demonstrated willingness to vary the price for this product at a state level, the ACCC therefore explored the possibility that the proposed acquisition may result in:

- CBA winding back this Western Australia-specific discount; and
- CBA increasing transaction account prices in Western Australia above national prices.

76. The proposed acquisition will see the aggregation of the two largest providers of transaction accounts in Western Australia — CBA with 23% (by value of deposits) and BankWest with 24%. The only other significant competitors are the other 'big four' banks — ANZ with 14%, NAB with 11% and Westpac/St George 15% (table 2).

77. By share of branches, the aggregation is less significant with the merged entity representing 27% Western Australian branches post-acquisition, with Westpac/St George, ANZ and NAB with 15%, 15% and 10% respectively (table 3).

Table 3 **Transaction accounts – Western Australia (%)**[2]

	Western Australia		
	Deposits	**Branches**	**ATMs**
CBA	**22.5**	**11.9**	**19.7**
Bank West	**23.5**	**13.5**	**18.5**
Merged entity	**46.0**	**25.4**	**38.1**
ANZ	**14.3**	**13.2**	**22.6**
NAB	**11.9**	**11.3**	**10.3**
WBC / St George	**15.1**	**18.1**	**16.7**
Bendigo / Adelaide	**2.6**	**6.0**	**3.1**
Elders	**< 1**	**15.6**	**-**
Rabobank	**< 1**	**1.4**	**-**
Other institutions	**~ 10.0**	**9.0**	**9.1**
TOTAL	**100.0**	**100.0**	**100.0**

78. While the discount offered by CBA for its Western Australian transaction account customers is likely to be removed, the ACCC considered this would occur even in the absence of the transaction. As discussed above, under the counterfactual, BankWest is unlikely to continue to act as a price leader in this market and therefore CBA's competitive response would also be wound back.

79. The ACCC considered whether CBA would be likely to increase prices in Western Australia *above* the national price. Despite what will be a more concentrated market in Western Australia than in other states post-acquisition, three significant competitors will remain for transaction accounts that would be likely to constrain CBA's ability and incentive to significantly and sustainably increase prices.

80. In particular, the ACCC noted that both ANZ and Westpac have a branch network that is as comprehensive as those of the two merger parties.

81. Further, the ACCC noted CBA is currently the dominant provider of transaction accounts in Tasmania (38% of deposits, nearest competitor 13%) and Victoria (33% of deposits, nearest competitor 16%) but it has never introduced differential fees and charges in these states.

82. The ACCC considered that the reputational effects from charging higher prices in one state may be a strong disincentive from doing so.

83. The ACCC did not consider that the aggregation arising from the proposed acquisition was likely to be sufficient to give CBA the ability and incentive to institute a significant and sustainable increase in its in price for its Western Australian transaction account customers.

Local markets - likely impact of the acquisition on consumer choice

---

[2] The market share figures are derived from a number of sources. The ACCC considers these figures to be the best estimates available for the purposes of this assessment.

84. With no variation in either the products, prices or key service dimensions (staffing levels and opening hours) occurring at a local level, the key dimension of local competition is the existence of a physical (branch and ATM) presence.

85. Banking industry market research obtained by the ACCC indicates that a common reason for switching transaction account providers is customer dissatisfaction with an existing account provider. Therefore, the availability of an alternative provider in a given local market is important for consumer welfare.

86. The ACCC has explored the impact of the acquisition on consumer choice based on the following local markets for transaction accounts:

- (at its widest) a metropolitan Perth transaction account market; and
- various local transaction account markets in regional and remote areas of Western Australia.

87. Minimal aggregation arises in local markets outside of Western Australia

88. The ACCC considered that on a Perth metropolitan-wide basis, consumers will retain a number of choices after the acquisition, including ANZ and Westpac both with a significant branch and ATM presence, and to a lesser extent, NAB and Bendigo. Even on an individual suburb level, in nearly every suburb where both BankWest and CBA have branches, each of the other big four banks also have branches. There is only one suburb, Kwinana, where no alternative competitor with a branch presence will remain. However, the ACCC notes that both ANZ and NAB have an ATM presence in Kwinana. In Rockingham, 9 kms (or a 15 minute drive) away, each of ANZ, NAB, Westpac and Bendigo has a branch and ATM presence.

89. In regional areas, in each of the towns where there is aggregation arising from the transaction, there is at least one other major financial institution with a branch and ATM presence.

SME and agribusiness markets

90. As for transaction account markets, the ACCC considered whether the acquisition may manifest in concerns for SME or agribusiness banking at either a national, state or local level.

91. The ACCC considered that concerns were unlikely to arise in terms of the national prices or service levels because BankWest has a relatively small share of SME and agribusiness customers on a national basis (2.6% and 3.3%, respectively).

92. In Western Australia, the merged entity will have around 27% by share of loans for business and agribusiness banking. Westpac, ANZ, NAB, Rabobank, and in the case of agribusiness banking, Elders, will all remain as significant competitors.

93. In each local market considered by the ACCC where merger parties overlap in terms of a business or agribusiness presence, a number of competitors offering specialised business banking services will remain post-acquisition.

Impact of the proposed acquisition on wealth management and insurance markets

94. CBA provides wealth management services under its CommSec, Colonial First State and First Choice brands. St Andrew's is a relatively small specialist provider of wealth management services.

95. The operations of CBA and St Andrew's in relation to the supply of investment, superannuation and retirement products, and the provision of financial advice. The ACCC found that St Andrew's has a very small presence in each of the wealth management markets for which it overlaps with CBA, and accordingly took the view that the proposed acquisition is unlikely to raise competition concerns.

K Conclusion

96. The ACCC considers that BankWest has been a particularly vigorous and effective competitor in retail banking markets nationally, especially for transaction accounts, home loans and saving products. However, under the counterfactual it will not continue with its east coast expansion or continue to act as the aggressive competitor it was previously.

97. In the absence of the global financial crisis, and the funding difficulties faced by BankWest's parent company, the ACCC's conclusion may have been different. However, with BankWest no longer capable of competing as aggressively, the ACCC found that it is unlikely that the removal of BankWest as an independent competitor would result in a substantial lessening of competition, *relative to the counterfactual*.

98. In Western Australia, the proposed acquisition will significantly increase CBA's market share, particularly for transaction accounts, but a number of other significant competitors remain. It is likely that the key aspects of the transaction account offer (product manufacture, price, staffing levels and opening hours) will continue to be determined nationally and therefore must reflect national rather than state or local competitive conditions.

99. While the acquisition will result in less consumer or business choice in the local markets where the branch presence of the two banks overlaps, in almost every local area there remains several other competitors with a physical presence in the same suburb, or at least in a major suburb nearby.

100. On the basis of the factors set out above, the ACCC formed the view that the proposed acquisition would be unlikely to result in a substantial lessening of competition in any of the relevant markets.

Public Competition Assessment

13 August 2008

Westpac Banking Corporation – proposed acquisition of St George Bank Limited

A Introduction

1. On 13 August 2008, the Australian Competition and Consumer Commission (**ACCC**) announced its decision not to oppose the proposed acquisition of St George Bank Limited by Westpac Banking Corporation (**proposed acquisition**). The ACCC was of the view that the proposed acquisition would not be likely to have the effect of substantially lessening competition in any relevant market, in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).

2. The ACCC formed its view on the proposed acquisition on the basis of the information provided by the merger parties and information arising from its 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.

B Public competition assessment

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:

   - a merger is opposed;
   - a merger is subject to enforceable undertakings;
   - the merger parties seek such disclosure; or
   - a merger 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 is considered to raise issues of interest to the public.

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 market to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change, because of developments.

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 its own merits.

7. Many of the ACCC's decisions will 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. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

C The parties

The acquirer – Westpac Banking Corporation (Westpac)

8. Westpac is the third largest retail bank in Australia by market capitalisation, valued at approximately $45 billion. Westpac's principal business activities include:

   - *Personal banking*: transaction and savings accounts, home loans, personal loans, credit cards, insurance and financial advice;
   - *Business banking*: small to medium enterprise (SME) banking services, agribusiness, lending and deposit products;
   - *Corporate and institutional banking*: through Westpac Institutional Bank, includes the provision of a range of financial services to corporate and institutional customers; and
   - *Wealth management and insurance*: through subsidiary BT Group and its affiliates, the provision of funds management, superannuation, insurance, financial planning and wrap and master trust platform products.

9. Westpac operates a comprehensive branch and ATM network in each Australian state.

The target – St George Bank Limited (St George)

10. St George is Australia's fifth largest retail bank by market capitalisation, currently valued at around $16 billion. St George's principal business activities include:

- *Personal banking*: transaction and savings accounts, insurance, residential and consumer lending (through St George Bank and Bank SA);
- *Business banking*: a range of financial services for small business and agribusiness (through Bank SA);
- *Corporate and institutional banking*: financial services for corporate, institutional and government customers; and
- *Wealth management*: through subsidiary Asgard and its affiliates, the provision of funds management, investment advice, financial planning and wrap and master trust platform products.

11. St George operates a branch and ATM network Australia-wide (excluding Tasmania), with a strong presence in NSW, the ACT and SA (through Bank SA).

D Areas of overlap

12. The merger parties overlap in the areas of personal banking, business banking, corporate and institutional banking, wealth management and insurance. Section I includes a discussion of the ACCC's views on market definition in each of these areas. Section J summarises the ACCC's views on the likely impact of the transaction on competition in each market.

E Industry background

Retail (personal and business) banking

13. The national retail banking landscape has historically been dominated by the four major banks — the National Australia Bank (NAB), Commonwealth Bank of Australia (CBA), Australia and New Zealand Banking Group (ANZ) and Westpac — with a number of regional banks competing against the majors in each state. Key regional banks include: St George in NSW, Bendigo Bank in Victoria, Suncorp and Bank of Queensland in Queensland, Bank West in WA and Bank SA in SA.

14. In recent years, regional banks have been expanding outside of their home states (through organic growth and acquisition). For example, Bank West is expanding its presence on the eastern seaboard and Bank of Queensland and Suncorp are expanding into the southern states and WA.

15. Foreign banks entered the Australian market following deregulation in the mid-1980s, including HSBC, ING Direct and Rabobank. While these banks have a limited presence in retail banking overall, they are significant competitors for particular products (e.g. ING Direct for savings accounts and Rabobank for agribusiness banking).

16. Deregulation also facilitated competition from non-banks, such as building societies and credit unions, which tend to differentiate themselves from the major banks based on service levels.

17. Mergers between the 'big four' banks are currently prevented by the 'four pillars' policy, introduced by Treasurer Paul Keating in 1990. The Federal Treasurer, Wayne Swan, recently announced that the current Australian Government would retain this policy.

F Timing

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

Date	Event
02 Jun 2008	ACCC commenced its review under the Merger Review Process Guidelines.
11 Jun 2008	Market inquiries commenced.
23 Jun 2008	Closing date for submissions from interested parties and survey responses from banking customers.
23 Jul 2008	ACCC published a Statement of Issues outlining preliminary competition concerns.
30 Jul 2008	Former proposed date for announcement of ACCC's findings, amended to allow for comments on the Statement of Issues.
06 Aug 2008	Closing date for submissions relating to the Statement of Issues.
13 Aug 2008	Announcement of ACCC's decision.

G Market inquiries

19. The ACCC conducted extensive market inquiries in relation to the proposed acquisition. A range of interested parties provided responses including competitors, industry and consumer associations, downstream users of products (including mortgage brokers and financial advisors) and interested third parties.

20. The ACCC also conducted two confidential customer surveys — one for personal banking customers and the other for business banking customers. The ACCC received 240 responses to the personal banking survey and 25 responses to the business banking survey.

21. Similar to the ACCC's general market inquiries process, responses were used to assist with the ACCC's understanding of personal and business banking habits and to identify areas of customer concern for the ACCC to explore further. The survey results were not treated as necessarily reflective of the banking habits or concerns of the general population but were used as a starting point for the ACCC's further inquiries.

H Statement of Issues

22. On 23 July 2008, the ACCC published a Statement of Issues regarding the proposed acquisition. The Statement of Issues identified the aggregation of the BT (Westpac) and Asgard (St George) wrap platforms as a preliminary competition concern. All other areas of aggregation arising from the transaction were noted as unlikely to raise concerns.

23. The ACCC sought further submissions from interested parties regarding the matters raised in the Statement of Issues. The Statement of Issues is available on the ACCC's website at www.accc.gov.au/statementsofissues.

I The ACCC's merger assessment process

24. Section 50 of the Act prohibits an acquisition if it would be likely to have the effect of substantially lessening competition in a *market*. Accordingly, to analyse the competitive impact of a particular merger, the ACCC's first task is to define the relevant market(s). The ACCC's views on market definition in relation to this matter are summarised in section J.

25. The ACCC's second task is to analyse competition in each market. In doing so, the ACCC examines the actual and potential sources of constraint on the merged firm if the acquisition were to proceed (based on the merger factors included in section 50(3) of the Act). A summary of the ACCC's views on the likely impact of competition in each of the relevant markets is provided in section K.

J Market definition

26. The ACCC considered a number of relevant markets under each of the key product areas – personal banking, business banking, corporate and institutional banking, wealth management and insurance.

Retail (personal and business) banking

27. The market definitions adopted by the ACCC for the purposes of assessing this matter are summarised in table 1.

Product dimension

28. The ACCC's market inquiries broadly supported the delineation of product markets in table 1. The only areas for which conflicting views were raised were in relation to personal lending products and the small-to-medium enterprise (SME) banking 'cluster'.

Table 1 **Retail banking markets**

Product dimension	*Geographic dimension*	*Functional characteristics*
Personal banking markets		
Transaction accounts	Local but price competition is national	Provide day-to-day deposit and payment functionality in the form of cheque books, debit cards, BPay, internet and phone banking.
Deposit/term products	National	Traditional savings instrument with a focus on growth in the capital value of the deposited funds.
Credit cards	National	Short-term unsecured lending product for individual consumers.
Home loans	National	Mortgage lending to individuals for the purpose of acquiring residential property.
Personal loans	National	Lending to individuals for the purposes of purchasing large personal consumption items.
Hybrid personal loans (margin loans)	National	Flexible lending provided to individuals for the purpose of acquiring shares or investing in funds or for drawing on the equity in assets.
Business banking markets		
SME banking	Local but price competition is national	A 'cluster' of banking products encompassing credit products, transaction/cash facilities, merchant acquiring services and banking advice.
Equipment finance	National	Includes lease finance products and hire-purchase products. The lease provider purchases capital equipment and leases it to the business for an agreed term, commonly two to five years.
Agribusiness banking	Local but price competition is national	A 'cluster' of banking products for agricultural businesses with a central element being specialised lending products including very long-term credit instruments.

29. Some market participants argued that there are increasing levels of demand-side substitutability between credit cards, personal loans and some home loan products (lines of credit). However, the ACCC considers that there are several practical differences between the various personal lending products that limit demand-side substitutability. Indeed, the differences in interest rates, accessibility and functionality are such that the ACCC considers that these products are appropriately treated as separate product markets.

30. In previous banking merger assessments, the ACCC has defined a SME banking 'cluster' market to include a range of transaction, savings and lending products.[1] Market inquiries for this matter largely supported the notion that SMEs will tend to source a bundle of banking products from their main financial institution. Customer research data obtained by the ACCC provided further evidence of this.

31. However, the merger parties and some market participants argued that there was evidence that SMEs were 'unbundling' certain products from the cluster. In particular, equipment finance and merchant acquiring services were noted as products that were increasingly sourced separately to an SME's primary banking relationship.

[1] Previous matters include Commonwealth/Colonial (2000) and Westpac/Bank of Melbourne (1997).

32. The ACCC considers that there is compelling evidence to suggest that equipment finance is a separate product market. Survey data provided to the ACCC suggests that most SMEs source equipment finance outside their primary banking relationship. Indeed, the ACCC understands that a significant proportion of new equipment finance is written through brokers.

33. For merchant acquiring services, on the other hand, industry survey data suggests that the majority of SMEs still source these products through their main banking relationship. The ACCC therefore considers that merchant acquiring services are appropriately defined as part of the SME bundle.

Geographic dimension

34. The ACCC has considered the geographic dimension of competition for each of the retail banking markets based on:

- the importance of a physical presence (branch and ATM networks) in consumer choice of provider; and

- the geographic scope of decision making of financial institutions, and in particular, the variation across regions in key elements of the service offering — product range, prices and service levels.

35. The ACCC considers that there are several banking products for which a physical presence is a key determinant of customer choice — namely transaction accounts, SME and agribusiness banking. Market inquiries suggested that customers take account of the physical presence of providers— the presence of a branch in a convenient location and the extent of the ATM network — in choosing between financial institutions for these products. This was also supported by market survey data provided to the ACCC and responses to the ACCC customer surveys.

36. For SME and agribusiness banking, the importance of the branch network reflects the ‘relationship driven’ nature of business banking. Most banks stressed the importance of having a face-to-face relationship with their business clients. Market survey data provided to the ACCC suggests that the majority of SME businesses visit their branch more than once a week.

37. For transaction accounts, the importance of a physical presence reflects both demand from certain segments of the customer base for in-branch transactions, and, more generally, customers seeking to avoid ‘foreign ATM’ fees by having access to a comprehensive ‘own bank’ ATM network.

38. In contrast, the evidence provided to the ACCC suggests that a physical presence is not an important determinant of consumer choice for other retail banking products — namely, deposit/term products, credit cards, home loans, personal loans, hybrid personal loans (margin loans) and equipment finance.

39. Evidence from market inquiries as well as data on the use of various channels illustrates that branch usage for these products is very low. Responses to the ACCC customer surveys demonstrated that service levels, fees and interest rates, and the availability of internet banking are more important to customers of these products than the location of branches and ATM availability.

40. Changes in the modes of distribution for each of these products, in particular a greater reliance on the internet, telephone and broker channels, has meant that a customer can obtain one of these products, transact and manage their relationship with their financial institution without visiting a branch. This trend has allowed institutions to compete in regions where they do not have a physical presence — for example, ING Direct has attracted a significant share of the Australian savings account market by distributing its products solely through the internet.

41. The ACCC notes there is strong evidence to suggest that price competition in all retail banking product markets is national. Market inquiries indicated that most financial institutions manufacture, distribute, market and price products on a national basis. The merger parties provided comprehensive information about their internal processes for developing products and setting prices that provided further support for this.

42. The ACCC explored the possibility that branch or local area managers could effect local price competition through providing discounts on certain products. However, information provided to the ACCC suggests that while these managers are, in some cases, afforded discretion to discount products, the discretion tends to accord with a pre-determined formula based on the degree of customer risk and the customer's current product holdings.

43. Other aspects of the merger parties' service provision, including staffing levels, marketing and branch opening hours, are also centrally determined. In the case of staffing levels, these are set according to a formula based on historic levels of customer demand. Competition for these aspects of the service offering also appear to be national.

Corporate and institutional banking

44. The corporate and institutional banking segment services the financial needs of large corporations, institutions, and government customers, including specialised service and advice in the areas of liquidity requirements, funding, interest rate management, capital transactions, debt/equity underwriting, foreign exchange markets, trade finance, international payments, international cash management, and project finance and commercial property lending.

45. The ACCC does not consider it necessary to reach a definitive view on the relevant market definitions in this matter because competition concerns are unlikely to arise regardless of the definitions adopted.

Wealth management

46. The ACCC considered the overlap between Westpac (BT) and St George's (Asgard and Advance) wealth management operations in the following areas:

- wholesale funds management;
- multi-manager investments;
- retail (wrap and master trust) platforms;
- financial advice from licensed financial planners; and
- non-advisory stockbroking services.

47. With the exception of the market for retail platforms, the ACCC does not consider it necessary to reach a definitive view on market definition as competition concerns do not arise irrespective of the market definition adopted.

48. Issues were raised by market participants in relation to retail platforms. The relevant market definition is discussed below.

Market definition for retail platforms

49. The ACCC has defined separate (but related) national markets for:

- the supply of platforms to institutions, independent dealer groups and financial advisor businesses; and
- the supply of investments through retail platforms to investors.

50. The significant majority of financial planning groups and platform providers contacted by the ACCC considered that wraps and master trusts compete directly for distribution by financial planners, and ultimately, to attract investors. The merger parties provided evidence (including board papers and other internal reports) that they benchmark their product offering and performance against a number of competing platforms — both wraps and master trusts. Industry studies also tend to benchmark master trusts and wraps against each other.

51. Some participants commented that the difference in legal structure between these products (in particular the custodial nature of the wrap investments) will mean that an investor is unlikely to view investment through a master trust as a viable substitute for a wrap platform. In addition to noting that this distinction between the products only applies for non-superannuation investment (all superannuation platforms are required to operate via a trust structure), most dealer groups submitted that this distinction would not materially influence the majority of investment decisions made at the financial advisor or investor level.

52. While the ACCC understands that wraps have offered investors advantages in terms of electronic transaction capability and access to direct investments (such as shares), market participants submitted that master trusts are being upgraded and are increasingly able to offer similar functionality and investment choices.

53. The ACCC considers that, based on the functional similarities between the two products and the views of both platform suppliers and dealer groups, wraps and master trusts are appropriately defined as being in the same product market. However, the ACCC notes that wrap products may compete more strongly for certain types of investors.

54. The ACCC also explored the substitutability between retail platforms and other avenues for retail investment such as multi-manager investments, industry funds and direct investments (such as shares). The ACCC notes that platforms offer a range of benefits (particularly in terms of diversity of investment choice, including the potential for investment in wholesale funds) and functionality that are not available through other retail investment channels. The ACCC notes that if the proposed acquisition does not raise competition concerns in the market narrowly defined (excluding other investment products) it is unlikely to raise concerns in any broader market.

Insurance

55. The merger parties overlap in the provision of both general and life insurance products. The ACCC does not consider it necessary to reach a definitive view on these market definitions in this matter because competition concerns are unlikely to arise regardless of the definitions adopted.

J Competition analysis

56. Westpac has claimed that if the acquisition proceeds it will continue to operate St George as a distinct retail brand. The ACCC notes that even if this is the case, common ownership will remove the incentive for the two organisations to compete on price or on other aspects of the service offering. Therefore, the ACCC has conducted its competition analysis on the basis that St George will no longer remain as an independent competitor post-acquisition.

Retail (personal and business) banking

Market structure and competitors – national

57. As noted above, the ACCC considers that the geographic dimension of competition is national for the majority of retail banking markets. Further, the ACCC is of the view that price competition occurs at a national level in all retail banking markets. Accordingly, the ACCC analysed whether the proposed acquisition would lead to a substantial lessening of competition at a national level in any retail banking market.

58. Table 2 illustrates that, on a national basis, St George has a relatively small share in each of the retail product markets – ranging from around 4% for credit cards to 9% for margin lending and SME banking. Post-acquisition, the merged entity's national share will range between 15% and 25% across the various markets.

59. The market share figures are derived from a number of sources. The ACCC considers these figures to be the best estimates available for the purposes of this assessment.

Table 2 **National market shares**

Markets	*St George*	*Merged entity*
Personal banking markets		
Transaction accounts	7%	19%
Deposit/term products	7%	20%
Credit cards	4%	20%
Home loans	8%	21%
Personal loans	8%	20%
Hybrid personal loans (margin loans)	9%	23%
Business banking markets		
SME banking	8–9%	22–23%
Merchant acquiring services	8%	25%
Equipment finance	8%	18%
Agribusiness banking	2%	15%

60. The ACCC notes that a range of independent competitors will remain in the various retail markets post-acquisition and, in particular, each of the other three major banks and the regional banks. Credit unions, building societies, the foreign banks and niche players also compete in the various markets and, in some cases, are particularly strong competitors. For instance, HSBC and ING Direct are strong competitors for deposit/term products and GE Capital Finance has a significant presence in equipment finance.

Market structure and competitors – local

61. The ACCC has considered competition at a local level for those markets it considers are appropriately defined as local — transaction accounts, SME banking and agribusiness banking. The local elements of competition tend to be around branch-based delivery and service levels.

62. The ACCC analysed state/territory market share data as a proxy for local market shares (table 3). St George has a sizeable local presence in NSW, the ACT and SA. In other states/territories, it has a very small share of the market, from as little as 0.1% of the market for transaction accounts in Tasmania to 6.5% in the NT. The merged entity will have a market share between 12% and 21% in each of the state/territory markets post-acquisition.

Table 3 **State/territory market shares**

Markets	*St George*			*Merged entity*		
	NSW / ACT	SA	Other states/ territories [a]	NSW / ACT	SA	Other states/ territories
Personal banking market						
Transaction accounts	15%	20%	<1 – 7%	26%	24%	12 – 21%
Business banking markets						
SME banking	6%	15%	<1 – 3%	22%	25%	15 – 18%
Agribusiness banking [b]	1%	14%	< 1%	16%	19%	12 – 14%

[a] Estimate excludes St George's market share in the NT which is around 7% for transaction accounts and 6% for SME banking. [b] For agribusiness banking, the market share for SA also includes the share in NT.

63. The ACCC notes that a number of significant local competitors remain in these markets post-acquisition including the three other major banks, the other regional banks and in the case of agribusiness banking, niche players such as Rabobank. The ACCC also understands that credit unions and building societies — strong competitors on customer service — represent a significant share of transaction accounts in the states/territories where St George has a strong presence (18% in NSW and the ACT and 24% in SA).

64. The ACCC also considered the aggregation of branches and ATMs arising from the acquisition in each state and territory. In NSW and the ACT, the merged entity will operate just over one fifth of branches and around 26% of ATMs. In SA, around one third of branches and ATMs will be owned by the merged entity.

65. There remain a number of competitors in each state with a strong branch presence and ATM network, most notably the other major banks. For transaction accounts — many credit unions, despite being small players independently — provide their customers with access to a comprehensive ATM network through the pooled Rediteller network, and in some cases offering discounted or free transactions at foreign ATMs.

66. The ACCC also notes that a number of regional banks are expanding their physical presence in an attempt to reach 'critical mass' in markets outside their home state. Bank West, Bank of Queensland, Suncorp and Bendigo Bank are all pursuing expansion strategies in states and territories where they have not previously had a large physical presence. For example, Bank of Queensland and Bendigo Bank each have built up a notable physical presence in NSW with 55 branches and almost 600 ATMs and 51 branches and 70 ATMs, respectively.

67. Westpac has claimed that there will be no net reduction in branch and ATM numbers as a result of the proposed acquisition. The ACCC notes that even if the merged firm decided to close some branches — in an environment where most banks are expanding their branch networks, and in particular, the regional banks are expanding into new states — this may create an incentive for further entry or expansion in local markets. The ACCC notes that while barriers to establishing a national presence are high, barriers for existing players to expand their presence into new local markets are comparatively low (see below).

Barriers to entry and expansion

68. The ACCC considers that the barriers to large scale national entry for all retail banking products are high and are particularly significant for branch-centric products. It is notable that even for those products that do not require a physical presence, almost all the new entry in recent years has come from large international financial institutions.

69. Regulatory barriers are significant for authorised deposit-taking institutions but also appear to be high for specialist credit card institutions. Both types of institutions are required comply with a host of prudential regulations, including large capital requirements.

70. Almost all market participants noted that current credit conditions have had the effect of raising barriers to entry for lenders. In particular, the closure of securitisation markets and the increase in the cost of credit has meant that many non-bank players have exited lending markets and some other players have ceased writing new loans in the interim. Similarly, market participants have commented that the *relative* increase in their costs of funds may make it more difficult for the smaller financial institutions (with less favourable credit ratings) to compete in the short term.

71. The ACCC considers that the high degree of customer 'stickiness' for many retail banking products may further increase entry barriers. Many market participants noted that it is often difficult and time-consuming for a customer to compare one product with another. In addition, even if a customer is aware of a product that is a 'better deal' in terms of price, the inconvenience and, in some cases financial cost (e.g. mortgage exit fees), may deter switching. The ACCC notes that the Australian Government's switching initiatives may act to somewhat reduce these barriers.

72. For those products that require a physical presence to attract market share, the capital costs of establishing a strong national presence (or indeed even in one state) are significant. The ACCC assessed that it would cost in the order of $70 million to roll out a branch and ATM network of a size sufficient to attract a transaction account market share of at least 10% in a state market the size of WA.

73. The ACCC considers that barriers to expansion for existing players into new local markets are comparatively low. The set up costs of a new branch is around $800,000, while the cost of a new ATM is around $45,000. The ongoing costs do not appear to be particularly high.

74. Notably, a number of the regional banks are adopting different models to reduce the cost of rolling out branches into new local areas. For example, Bank of Queensland has a franchise business model whereby individual branches are owner-operated but are branded Bank of Queensland. Bendigo Bank has adopted a community bank business model (whereby individual branches are owned and operated by local communities).

Is St George a uniquely vigorous and effective competitor?

75. The ACCC notes that the level of aggregation arising from the proposed acquisition is relatively low in each of the retail banking markets. Further, a number of competitors, both large and small, will remain in each of the markets post-acquisition. In such circumstances, the proposed acquisition is unlikely to result in competition concerns unless it can be shown that St George is a uniquely vigorous and effective competitor in driving price or non-price competition in the market (including by defeating attempts at coordinated conduct).

76. The ACCC has drawn on a large volume of information in assessing the role of St George in driving competition in the various retail banking markets. This includes pricing data (across all products over a period of three years), documentary evidence provided by the merger parties (including internal pricing committee documents), and information provided by market participants and ACCC customer survey respondents.

77. Based on the pricing information analysed by the ACCC and the information submitted by market participants, the ACCC is aware of instances of St George being a price leader for certain products. For example, at times St George has offered the lowest rate on certain fixed rate home loan products. However, the ACCC notes that such examples of price leadership were relatively rare in the three years of pricing data examined. Certainly there is no evidence to suggest that St George was a sustained price leader (or that Westpac frequently responded to St George's prices) on any particular product.

78. A number of market participants argued that St George has differentiated its offering from other players in the market through its focus on customer service. Indeed, market research data illustrates that St George consistently outperforms the major banks (other than ANZ) on measures of customer satisfaction. However, the ACCC notes there are other players that perform even more strongly in customer satisfaction surveys including credit unions and the other regional banks. Further, ANZ's move to differentiate itself from the major banks on the strength of its customer service demonstrates that it is possible for competitors to replicate these elements of the service offering.

79. The ACCC does not consider that there is sufficient evidence to demonstrate that St George has been a uniquely vigorous and effective competitor in any of the retail banking markets, at least to the extent that would be required to show that the removal of St George as an independent player would be likely to lead to a *substantial* lessening of competition. The ACCC does however acknowledge the role that regional banks have played in challenging the major banks as they have entered new states and competed aggressively to gain market share. The ACCC will closely analyse the likely competition implications of any further proposed acquisitions of regional banks.

Conclusion

80. The ACCC considers that the proposed acquisition would be unlikely to result in a substantial lessening of competition in any of the retail banking markets. Barriers to national entry are high and appear to be even more significant for branch-centric products. However, the level of aggregation arising from this transaction is relatively limited and a number of competitors — the other three majors, regional banks, credit unions and building societies, and other niche players — will pose a constraint on the merged entity post-acquisition. Further, while St George is competitive in terms of price and customer service, it does not appear to be unique or a market leader in either attribute.

Corporate and institutional banking

81. The corporate and institutional banking space appears to be highly competitive. It is contested by all national banks as well as the large merchant banks and international securities houses, such as UBS, HSBC, Deutsche Bank, Macquarie Bank and JP Morgan. St George has a minimal presence in these markets.

82. The ACCC considers that the proposed acquisition would be unlikely to result in a substantial lessening of competition in these markets.

Wealth management

83. Other than for retail platforms, no market participants raised concerns in relation to the impact of the proposed acquisition on wealth management markets. Indeed, St George (Asgard and Advance) and Westpac (BT), have a limited presence in wholesale funds management and non-advisory stockbroking services. For multi-manager investments and financial advice, the ACCC notes there will remain a significant number of large independent competitors in these markets post-acquisition.

Retail (wrap and master trust) platforms

84. In the Statement of Issues, the ACCC identified the aggregation of two of the three largest providers of wrap platforms as a potential competition concern. For the reasons outlined above, the ACCC is of the view that wraps and master trust platforms are demand-side substitutes and are therefore appropriately considered as part of broader markets for the supply of retail platforms to dealer groups and to investors.

Market structure and competitors

85. The ACCC analysed market share data based on the level and growth in funds under administration (FUA) for each platform supplier. Outside of the merger parties, there are a range of platform suppliers that have attracted and continue to attract significant funds including CBA/Colonial, NAB/MLC, Macquarie, AXA and ING Australia. As discussed above, both platform suppliers and dealer groups considered that these platforms compete directly with those of the merger parties both in terms of attracting dealer groups and investors.

86. Even accounting for the fact that wrap platforms compete more closely with each other, at least for some investors, a number of significant competitors remain in this segment including Macquarie, Avanteos (CBA) and Oasis. While some market participants submitted that only the largest three wrap platforms (BT, Asgard and Macquarie) would have sufficient 'scalability' to meet their needs, this was rejected by other large dealer groups, with many noting that they utilise wrap platforms outside of these three.

Barriers to entry

87. The ACCC considers that the barriers to new entry for retail platform supply are significant. Indeed, there are considerable barriers to entering on the scale that would be required to be a competitive threat to existing key players.

88. Many market participants noted that the capital costs of entry are significant because of the sophisticated technology required. Estimates of the cost to create a platform with functionality similar to the key players ranged from around $30 to $100 million. These participants also noted that ongoing development costs and maintenance costs are significant.

89. Some participants noted that it would be difficult to achieve the scale necessary to defray the significant capital costs of new entry because of barriers to customers switching platforms. The ACCC acknowledges that there are barriers to switching investors' stock of funds across platforms because of the administrative burden and potential tax implications. However, new flows into this market are growing strongly — Plan for Life predicts that the platforms investment market will grow from around $400 billion today to $972 billion in 2017.

90. The ACCC considers that new funds are far more contestable, indeed, dealer groups have demonstrated a willingness to divert new funds from their clients to a new platform (even if they keep the existing stock of funds with the existing platform).

Dynamic characteristics of the market

91. The ACCC considers that markets for attracting retail investment dollars are highly dynamic, driven by technological advances and the large and growing pool of investment funds.

92. A number of market participants pointed to separately-managed accounts (SMAs) as the 'next big thing' on the investment horizon in Australia. SMAs are a portfolio made up of securities that are beneficially owned by the individual investor and managed by professional managers. There has been recent entry in this space from large international and domestic players — for example, BlackRock Investment Management Australia (formerly Merrill Lynch) and Next Financial.

93. Market participants have noted that SMAs are more tax efficient than investments through retail platforms and typically have lower management fees. The ACCC considers that the threat of expansion by providers of these new products is likely to put further competitive pressure on retail platform providers.

Conclusion

94. The ACCC considers that the proposed acquisition would be unlikely to result in a substantial lessening of competition in the markets for the supply of retail platforms. There remain a number of strong competitors including other wrap platforms — such as Macquarie, Avanteos (CBA), and Oasis (ING/ANZ) — as well as a number of master trust platforms including CFS First Choice, MLC (NAB) and Navigator (Aviva). The ACCC further considers that the highly dynamic and technology driven nature of this market means that new competitive threats are likely to emerge in any case, as already evident in the availability of SMA products.

Insurance

95. Westpac and St George both provide personal (general and life) insurance products. Westpac manufactures and supplies some insurance products while St George distributes IAG general insurance products (one of the largest general insurance providers along with Suncorp).

96. Both Westpac and St George are small participants in the retail supply of general and life insurance products. The ACCC also notes there will remain a number of strong competitors post-acquisition.

97. The ACCC considers that the proposed acquisition would be unlikely to result in a substantial lessening of competition in any insurance markets.

K Conclusion

98. On the basis of the factors set out above, the ACCC formed the view that the proposed acquisition would be unlikely to result in a substantial lessening of competition in any of the relevant markets.