AUSTRALIAN COMPETITION & CONSUMER COMMISSION

ACCC Minute

Office	Darwin and Melbourne
Date	21 September 2020
To	Chair
CC	Marcus Bezzi, Leah Won
From	Kerin Callard and Declan Harrington; FSCB Investigations & Enforcement team
Subject:	Superannuation industry in Australia – ACSI & common shareholdings

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2. Structure of this minute

- Section 3 provides an overview of the superannuation industry in Australia, including the role of ACSI and its membership.
- Section 4 explains the competitive landscape of the superannuation industry, including levels of market concentration, competition and barriers to entry, as well as the competitive considerations around common shareholdings.
- Section 5 provides an overview of previous government inquiries into the superannuation industry.

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3. Background

The superannuation industry in Australia

3.1. As of June 2018, there were 217 institutional superannuation funds in Australia which can be broadly categorised as retail, industry, public sector or corporate funds.[1] While assets under management are spread fairly evenly across each category of fund, 82 per cent of member accounts reside in retail and industry funds.[2] In total, superannuation funds comprise over 15 million members and collectively own over $2.7 trillion in assets, playing a key role in the funding of Australians' retirement.[3] In December 2017 the superannuation sector was the second-largest sector in the Australian financial system by size.[4]

3.2. The modern superannuation system began with the introduction of the Superannuation Guarantee in 1992, which extended superannuation coverage to 72 per cent of Australian workers and established prescribed contributions for employers. Since 2005, most employees have been able to choose their superannuation fund and, in effect, the product to which they want to direct their superannuation contributions.[5]

3.3. In recent years, a number of government reviews have considered the superannuation industry. These reviews are discussed briefly at section 5.

ACSI

3.4. ACSI was established in 2001 as a proxy adviser to superannuation funds and its stated aim is to provide a 'strong, collective voice on environmental, social and governance issues on behalf of [its] members'. It engages with companies to influence their environmental, social and governance (**ESG**) performance.

3.5. ACSI's Annual Reports indicate that it undertakes four types of work, being research, engagement, voting advice and advocacy. ACSI states that by working collectively, its members aim to achieve material outcomes for their beneficiaries and deliver genuine and permanent improvements to the ESG practices of the companies in which they invest.

3.6. ACSI has 38 members, 31 of which are Australian superannuation funds. These superannuation funds include some of Australia's largest (by funds under management).[6]

3.7. ACSI estimates that its members collectively own on average 10% of every ASX200 company.[7] A full list of ACSI's members is at **Annexure A**.

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[1] A retail fund is a superannuation fund that offers superannuation products on a 'for profit' basis; industry funds are funds originally formed to provide access to superannuation for employees working within a particular industry; corporate funds are funds sponsored by a single employer or group of related employers for the benefit of company employees; and public sector funds are funds designed for employees working in the public or government sector.

[2] Productivity Commission Inquiry Report: 'Superannuation: Assessing Efficiency and Competitiveness', 21 December 2018 (Productivity Commission Inquiry), pp.85-86.

[3] Productivity Commission Inquiry, p.3.

[4] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: 'Consumer Interactions with the Superannuation Industry', p.6.

[5] Productivity Commission Inquiry, p.92.

[6] ACSI: 'Who our members are'; SuperGuide: 'Comparing super funds'.

[7] ACSI: 'Who our members are'.

3.8. ACSI is one of four major proxy advisers in Australia, the other three being Glass Lewis, Ownership Matters and ISS Australia. Those firms do not list on their websites who they advise but they do not appear to have a similar focus on superannuation.

3.9. In 2018 ASIC released a report on proxy adviser engagement practices in Australia.[8] In its report ASIC found that institutional investors considered recommendations from proxy advisers as only one input in their voting decisions and that concerns about the amount of weight institutional investors give to proxy advisers were overstated.[9] ASIC stated that proxy advisers are a useful way of investors obtaining more information about their voting decisions.

3.10. ASIC's report contained a number of good practice recommendations to encourage more effective engagement between companies and proxy advisers including a recommendation that companies should ensure that confidential, price-sensitive information is not selectively disclosed to proxy advisers during engagement.

4. Competition in the Australian superannuation industry

Market concentration

4.1. The Australian superannuation industry has low market concentration with the top four superannuation funds accounting for less than 20% of industry assets.[10] These major players are Australian Super (6.4%), AMP Limited (4.3%), QSuper (4.1%) and First State Super (4%).

4.2. The number of superannuation funds has decreased over the last five years due to consolidation. This is driven by a desire to reduce fees and offer a greater range of products.[11] However, it is anticipated that the benefits obtained by market consolidation will be offset by increased regulation.[12]

4.3. In addition, the Productivity Commission has noted that while market concentration is low, it is sometimes superficial and that this affects smaller funds, which pay higher fees, disproportionately.[13] Despite the market consolidation which has already occurred, substantial unrealised scale economies remain.[14]

Competition

4.4. The Productivity Commission concluded that competition in the superannuation industry is not being fully harnessed due to a lack of engaged membership and rivalry between funds to attract and retain members. In addition, poor comparability of options and other factors indicate a lack of healthy competition.[15] This is amplified by the lack of competition in the 'default' market, by which up to two-thirds of new job

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[8] ASIC: 'ASIC review of proxy adviser engagement practices', June 2018 (ASIC review).

[9] ASIC review, p.4.

[10] IBISWorld, p.26.

[11] IBISWorld, p.13.

[12] IBISWorld, p.16.

[13] Productivity Commission Inquiry, pp.58, 325-7.

[14] Productivity Commission Inquiry, p.22.

[15] Productivity Commission Inquiry, p.515-16.

entrants do not choose their own fund but instead are subscribed to a fund of their employer's choosing.[16]

4.5. IBISWorld indicates that within the market, superannuation funds compete on their performance and fees charged to consumers. They also compete with other investment related products such as property and financial markets.

Barriers to entry

4.6. There are high barriers to entry due to high regulation, high costs and the already large number of competing funds in the market.

Common ownership of firms through investment funds

4.7. Common ownership refers to the simultaneous ownership of shares in competing firms by institutional investors, below the level of control. These institutional investors (which may be banks, pension funds, insurance companies, mutual investment funds or other) are normally minority passive investors; that is, their shareholdings are 5 per cent or less and they typically do not have board representation.[17] Globally, there are only some jurisdictions where acquisitions of non-controlling minority shareholdings are subject to merger review.

4.8. The OECD has recently indicated that common ownership in firms through diversified investment funds may have a detrimental impact on competition in certain concentrated sectors (particularly airlines and banking).[18] An oligopolistic market where competitors share common shareholders may lead to higher prices, a higher chance of collusion and incentivise management to consider industry or investment fund performance rather than that of the individual firm.[19]

4.9. In particular, the OECD identified that common ownership could incentivise institutional investors to facilitate coordination among portfolio firms. An investor holding shares in multiple firms in an industry may act as a 'cartel ringmaster', passing information between the parties and monitoring compliance. This is amplified in a concentrated industry where common owners hold significant shareholdings in a company.[20]

4.10. The OECD identifies the establishment of voting blocs as the most straightforward mechanism by which this might occur, allowing an institutional investor to exert effective (or at least sufficient) control over voting rights and influence, particularly with respect to governance and ownership structure. Referring to Australia as an example, the OECD noted that the reliance of institutional investors on proxy voting advisers, which analyse shareholder voting decisions and make recommendations, can strengthen the stability of these blocs.[21] However, the extent to which the recommendations of proxy advisers actually distort overall voting results is unclear.[22] The ASIC report discussed above notes that there were instances of institutional investors voting contrary to the advice of their proxy adviser.[23]

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[16] Productivity Commission Inquiry, pp.528, 576-7.

[17] Kluwer Competition Law Blog: 'Common ownership – where do we stand?', 15 April 2019.

[18] OECD: 'Common Ownership by Institutional Investors and its Impact on Competition', 5-6 December 2017 (OECD report).

[19] OECD report, p.5.

[20] OECD report, p.20.

[21] OECD report, pp.22-23.

[22] Muraca and Freeman: 'Regulation of proxy advisory firms'.

[23] ASIC Review, p.4.

4.11. The OECD report noted that there is growing concern about the concentration of voting rights, and potential conflicts of interest, associated with institutional investors employing proxy advisory firms to analyse shareholder voting decisions. This concentration could be a source of concern from both a corporate governance and competition policy perspective. These proxy services could be a catalyst for common ownership competition impacts, since they could serve to explicitly identify the common interests of institutional investors within an industry and form voting recommendations accordingly.[24]

4.12. Ultimately the OECD discussion suggested that further analysis is needed, and competition authorities may wish to use market studies to gain visibility into markets with substantial institutional investor ownership and consider the scope for examining common ownership under cartel or merger review legislation.

5. Previous Australian Reviews

5.1. The Federal Government has commissioned a number of inquiries and reviews which have considered the Australian superannuation industry, including:

- The **Financial System Inquiry (2014),** which found that superannuation is not efficient due to a lack of strong price-based competition and questioned whether the government's 'MySuper' reforms would improve competitive pressures. This inquiry recommended the setting of clear objectives for the superannuation industry, and improvements in operational efficiency during accumulation and retirement.
- A **Productivity Commission review into the efficiency and competitiveness of the Australian superannuation system (2018**) which found that inadequate competition, governance and regulation has led to structural flaws, such as underperformance and multiple accounts, which have harmed millions of fund members. This review recommended the superannuation system be modernised to improve accountability and transparency.
- The **Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2019)** which made a number of recommendations around the superannuation system, including that the regulatory powers of ASIC and APRA be strengthened.
- The **Retirement Income Review (2020)** which is currently underway and is considering how the retirement income system supports Australians in retirement. This report was due to be completed in June 2020, but is not publicly available and may have been delayed due to COVID-19.[25]

5.2. These inquiries and reviews did not identify concerns about common ownership or proxy advisers in relation to Australia's superannuation industry.

6. Recommendation

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[24] OECD report p36

[25] Treasury: 'Retirement Income Review'.

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ANNEXURE A – LIST OF ACSI MEMBERS

Australian superannuation funds

- Australian Catholic Superannuation Retirement Fund
- AustralianSuper
- CareSuper
- Catholic Super
- CBUS
- Club Plus Super
- Christian Super
- EnergySuper
- Equipsuper
- First State Super
- First Super
- HESTA Super Fund
- Hostplus
- Legalsuper
- Local Government Super
- LUCRF Super
- Maritime Super
- Media Super
- Mine Super
- MTAA Super
- NGS Super
- Qantas Super
- QSuper
- REST
- State Super
- Statewide Super
- Tasplan Super
- TelstraSuper
- TWUSuper
- UniSuper
- VicSuper
- Vision Super

Australian asset owners and institutional investors

- Australian Institute of Superannuation Trustees
- IFM Investors
- VFMC

International asset owners and institutional investors

- APG
- NZ Super Fund
- RPMI Railpen
- Universities Superannuation Scheme Limited