Ex post review of ACCC merger decisions

February 2024

Contents

1. Introduction to the report

During 2023, the ACCC conducted ex post reviews of three past merger decisions to inform and improve our merger investigative processes, investigation efficiency and our decisions. These reviews have provided us with some broad insights and lessons which are informing our current merger reviews, and the weight we give to different types of evidence from different parties.

The key broad takeaways which we have observed include that:

- Market dynamics post-acquisition are difficult to predict;
- Remedy outcomes can vary; and
- Outcomes are not always consistent with expectations.

We have completed in-depth ex post reviews of the following matters:

- AP Eagers acquisition of Automotive Holdings Group (**AP Eagers/Automotive Holdings**)
- ANZ Terminals' acquisition of GrainCorp Liquid Terminals Australia (**ANZ Terminals/GrainCorp**)
- Bauer Media's acquisition of Pacific Magazines (**Bauer/Pacific**)

The report is divided into the following sections:

- **Section 2**: A summary of the approach taken to ex post merger reviews
- **Section 3**: An amalgamated summary of key takeaways
- **Section 4**: A high-level summary of the three in-depth ex post reviews conducted to date.

2. Summary of approach taken to ex post merger reviews

This is the second time the ACCC has published a report on ex post reviews of past merger decisions. The report from our previous ex post review, which was completed in February 2022, is available here.

In informing our approach, we have had regard to learnings from our first ex post review project and the practices and experience of overseas competition agencies. A variety of approaches have been adopted by other competition agencies, including whether to conduct the work internally, or engage external consultants, and whether findings from the work are made publicly available.

The reviews which are referenced in this report have been conducted internally. This enabled us to be flexible regarding the scope and timing of reviews, according to the availability of information. It also ensured that we minimised the impacts of confidentially constraints (while maintaining confidentiality) and best managed our resources between ex post reviews and our usual mergers work.

Our focus when undertaking ex post merger reviews is not to determine whether specific ACCC decisions were correct or incorrect, compared to alternative decisions available to the ACCC at the time. Rather, we have focused on specific predictions (in relation to merger factors or remedies) made by the ACCC, merger parties and/or third parties at the time of a merger review that influenced the outcome. We have sought to identify when the situation played out as we predicted and when it did not. When it did not, we have sought to identify the reasons, and whether there are lessons to be learnt for future reviews.

Our goal from conducting ex post reviews is, to the extent possible:

- improve the quality of future ACCC merger decisions;
- assess the effectiveness of tools and models used to make predictions about future market developments;
- improve our processes and the efficiency with which we undertake merger reviews;
- improve transparency and confidence in the ACCC's processes and decision- making; and
- evaluate the effectiveness of merger policy and ACCC interventions and contribute to a broader discussion around law reform.

Matter selection

We have selected matters according to a range of criteria, including the availability of information and data, the time elapsed since the merger, the unique issues raised, and the potential relevance to future ACCC investigations.

The Bauer/Pacific and ANZ Terminals/GrainCorp matters considered in this report were not opposed by the ACCC – this followed the ACCC publishing a Statement of Issues identifying preliminary competition concerns during the review of each matter. In the case of ANZ Terminals/GrainCorp the ACCC's decision was subject to a section 87B undertaking. The parties to the AP Eagers/Automotive Holdings acquisition sought merger authorisation from the ACCC. Authorisation was granted but was conditional on the receipt of a section 87B divestment undertaking. The authorization was decided on the competition limb of the merger authorization test and therefore did not rely on the public benefit claims.

At this stage, we have not conducted in-depth ex post reviews of mergers which were opposed. Opposed matters can include:

- matters that were not completed after our oppose decision; and
- matters which were completed after our decision, as the merger parties successfully challenged the ACCC decision in the Federal Court or Australian Competition Tribunal.

The reasons for not having conducted detailed reviews of opposed matters at this stage include:

- too little time has passed to assess the effects of the merger, or conversely the merger was completed too long ago to offer insights relevant to the current work of the ACCC;
- where a merger did not complete as a result of ACCC intervention, actual market developments are unlikely to yield useful information sufficient to assess ACCC predictions at the time of the initial review; and
- in relation to the small number of matters which were ultimately decided by the Court or Tribunal, the reasons for the decisions have been based on factors that cannot be tested through ex post review (for example, the intentions of a merger party to cease operating in the absence of a merger).

Limitations of ex post reviews

There are practical and methodological challenges when undertaking ex post reviews. In particular:

- It is impossible to take into account or consideration all events that have taken place since a merger or would have taken place in the absence of a merger, and the effect that these have or would have had on competition.
- The impact of COVID-19 has created major disruptions in many markets, such that the effects of a merger on competition may have been amplified or muted compared to what may have otherwise been expected. While our analyses have sought to control for this impact, this has not always been possible.
- While the results of ex post reviews provide informative insights, the depth of the reviews can be affected by the data available to the ACCC. Currently our ex post reviews rely on the voluntary provision of sensitive commercial information by parties who may have little incentive to provide such information. Accordingly, in the course of our ex post review work we have often had to rely on anecdotal information about price changes through interviews with industry participants and this has affected our capacity to perform rigorous econometric assessments. The ACCC will advocate for compulsory information gathering powers to be available to the ACCC for ex post reviews which would extend the ACCC's capacity to gain deeper insights from these ex post reviews.

Ex post reviews and the ACCC's merger law reform proposals

In November 2023, Treasury initiated a Competition Review which is considering whether Australia's current merger rules and processes are effective and in what ways they could be improved. The ACCC strongly supports reform and recently provided two submissions to the review advocating for changes to strengthen Australia's merger regime.

The ACCC has committed to conducting ex post reviews each year and it is intended that this will continue regardless of whether the Government decides to proceed with merger law reforms at this time. While the purpose of the ACCC's ex post reviews is to focus on our internal investigative processes and decision making, some findings may be relevant to the discussion about merger review processes in Australia.

Confidentiality of information and findings

The ACCC's ex post reviews rely on a large range of confidential information obtained voluntarily from interested parties now and at the time of the transactions. It is therefore not possible to publish the ACCC's detailed ex post analyses of specific matters. This report provides a summary of the high-level findings and takeaways.

3. Key takeaways

The ACCC's review of past merger decisions has provided useful insights for ACCC case teams and decision makers. The key takeaways are summarised below.

Market dynamics are difficult to predict post-transaction

As part of a merger review or authorisation, the ACCC is required to analyse the markets that will be impacted by the merger and make judgments about the likely future impact of the merger on competition. This is a challenging exercise and is informed by economic theory and analysis, information, data and documents received from the market and internal and expert knowledge.

This ex post review project has sought to better understand the difficulties in applying a forward looking test and predicting market dynamics that may impact competition post-acquisition. This ex post review project highlighted the difficulties, with contrasting results across the Bauer/Pacific and ANZ Terminals/GrainCorp matters.

In the Bauer/Pacific matter, market dynamics following the acquisition appear to have played out in a manner consistent to that predicted by the ACCC during the initial review. The information received during the ex post review supports the assessments underpinning the ACCC's initial analysis and decision. We found that the industry was in general decline and that the merged entity would likely be constrained by online content providers.

In contrast, in the ANZ Terminals/GrainCorp matter, there is evidence that market dynamics may have played out differently to the ACCC's expectations based on the public review. There are some indicators that this deviation may have impacted competition. For example:

- Rivals to ANZ Terminals at the Port of Melbourne have not expanded their operations in a meaningful way, and feedback received during the ex post project indicates that the threat of expansion may not be effectively constraining the merged entity. This appears to be due to a range of factors that were not visible to the ACCC at the time of the initial review, including commercial reasons impacting the ability of some suppliers of bulk liquid storage to compete effectively, parties (including customers) underestimating the barriers to expansion and the impact of COVID-19 and its disruption to supply chains.
- At the time of the initial review, the ACCC did not receive any concerns from market participants about competition between ports and, in fact, the ACCC had historically found most ports were in separate geographic markets. However, the ex post review raised some concerns about the ability of ANZ Terminals to leverage its larger national footprint and potentially inhibit the effectiveness of smaller competitors that do not have the same geographic reach.

Remedy outcomes can vary

The ACCC will, in appropriate circumstances, accept undertakings offered pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) (the **CCA**). These undertakings can assist in preventing a substantial lessening of competition that would otherwise result from a merger. Undertakings, whether relatively simple or complex, may require a considerable level of ongoing resources and maintenance, and their success in addressing the competition concerns identified can be difficult to predict.

This ex post review found contrasting results in the effectiveness of undertakings provided to the ACCC. For example, feedback received following the AP Eagers/Automotive Holdings transaction generally indicated that the undertaking has been effective. The initial review raised competition concerns as the transaction would remove AP Eager's closest and largest competitor in the Newcastle and Hunter Valley and create an enlarged dealership group that would be considerably larger than the next largest competitor in the area. The undertaking offered by AP Eagers to divest the dealership it held prior to the acquisition to an ACCC approved purchaser has enabled a new competitor to enter and compete as a going concern in that market. This appears to have addressed the concerns the ACCC held.

By contrast, feedback received in relation to the undertaking accepted by the ACCC in the ANZ Terminals/GrainCorp matter indicates that it may not have been fully effective in addressing the ACCC's concerns. During its public review the ACCC considered that a critical driver of competition was the ability of competitors to expand and win new contracts. In response to the concerns raised by the ACCC regarding the Port of Melbourne where consolidation was particularly high post-acquisition, ANZ Terminals provided a behavioural commitment for a period of 10 years, to not lease any more of the limited land remaining at the Port of Melbourne's Coode Island without receiving ACCC clearance to do so. The underlying objective of this obligation was to maintain competitive tension in the market through the threat of existing competitors expanding. Whilst the ACCC understands based on the information available to it that ANZ Terminals has complied fully with this obligation to date, the ex post review findings have cast doubt on the effectiveness of the undertaking for the reasons that are outlined later in this report.

The ANZ Terminals/GrainCorp matter also highlights how unanticipated complexity may arise when it comes time to effect a divestiture. To address competition concerns raised in South Australia arising from the transaction, ANZ Terminals committed to divest its Osborne facility. Certain elements of the divestiture, that the ACCC would have expected to have been resolved at divestiture, remain outstanding more than four years after the undertaking was accepted.

Outcomes are not always consistent with expectations

A key question in any review is whether the merged entity will obtain, and be able to leverage, market power as a result of the acquisition. The merger parties will typically make claims to the ACCC regarding those constraints and the likely impact that the proposed acquisition will have. This ex post review has looked closely at the constraints claimed by the parties and how they played out post-acquisition. The findings highlight difficulties of making predictions, and the significance of market power and customers' alternative options on competitive outcomes.

In the Bauer/Pacific matter the ACCC decided unconditionally not to oppose an acquisition which enabled Bauer to acquire its closest competitor and reduced the number of magazine publishers in specific categories from two-to-one. During the initial review, the parties claimed that, in the context of a rapidly declining market where consumers were readily switching to online sources of content, the merged entity would not gain a significant level of market power. The ACCC tested these claims thoroughly during the review via its compulsory information powers, the examination of executives and the forensic analysis of the parties' financials. The ex post review has shown that this outcome has largely played out in practice, and the merged entity has been effectively constrained from acquiring and exercising any market power through the threat of losing customers to online content providers.

In ANZ Terminals/GrainCorp, the parties submitted that the closest competitive constraint would come from the ability of storage providers to expand and win contracts based on new tanks being built and that the potential for customers to leave an existing storage provider in favour of a new provider was a key driver of competition. This constraint was a factor in the ACCC's decision to accept a court enforceable undertaking that ANZ Terminals would not acquire additional parcels of land at the Port of Melbourne without first obtaining clearance from the ACCC. The purpose of this undertaking was to preserve the potential for existing rivals to expand and drive competition. However, the findings of the ex post review suggest that market dynamics are playing out differently to what the ACCC anticipated, and that the constraint exerted by the threat of customers moving to alternate storage providers may not be as substantial as the ACCC had initially considered. Consequently, with limited alternative options for customers, feedback indicates that the merger may have strengthened ANZ Terminals market position at the Port of Melbourne, and some customers may be negatively impacted by the removal of GrainCorp as an independent competitor at the port.

Together, these reviews highlight the important constraint on market power that results from the threat of losing customers, and the need for the ACCC to thoroughly understand the relationships between customers and suppliers. The findings also highlight the difficulties inherent in predicting competitive constraints post-acquisition. In relation to ANZ Terminals, the challenges of forecasting long-term demand and the inherent risk for customers in signing long-term contracts to underwrite new storage, especially in a volatile market, appears to have had more impact on the expansion of storage than the ACCC thought at the time of the review.

4. AP Eagers - Automotive Holdings Group

Authorisation application lodged: 29 April 2019
Decision date: 25 July 2019
Outcome: Granted with conditions

ACCC decision

AP Eagers sought merger authorisation for its proposed acquisition of all of the shares of Automotive Holdings Group that it did not already own.

Prior to the acquisition, AP Eagers and Automotive Holdings were competing automotive retail groups. Both parties sold cars, trucks and buses and provided a range of ancillary services (eg, servicing and maintenance, supply of spare parts, repair services, finance services) through their authorised dealerships across Australia.

AP Eagers and Automotive Holdings were the two largest dealership groups in Australia. The ACCC considered the impacts of the merger in a number of national and local markets, and raised significant concerns about the impact of the merger on competition for the sale of new cars in the Newcastle and Hunter Valley region (comprised of Central Newcastle, Cardiff, Gateshead and Bennetts Green, Maitland/Rutherford, Cessnock, Singleton and Port Stephens).

In this region, the merger would have removed AP Eager's closest and largest competitor and created an enlarged dealership group that would be considerably larger than the next largest competitor. The ACCC considered that there would be no sufficient constraints to remove the ability of the merged entity to increase prices.

In order to address the ACCC's concerns in the Newcastle and Hunter Valley region, AP Eagers offered a court enforceable undertaking pursuant to section 87B of the CCA. The undertaking required AP Eagers to divest its existing new car retailing dealerships and related business sites in the Newcastle / Hunter Valley region (known as the "**Kloster**" business) to an ACCC approved independent purchaser. These dealerships were sold to the Tony White Group in July 2019.

Ex post findings

The AP Eagers/Automotive Holdings matter was identified as a suitable candidate for ex post review because the ACCC considered that it would present an opportunity to review an ACCC assessment of competition impacts in a local market and to scrutinise the effectiveness of a divestment undertaking.

In line with the focus of the initial ACCC investigation, this ex post review solely tested the impact of the acquisition on new car retailing in the Newcastle and Hunter Valley region. The ACCC's analysis is based on qualitative information gathered from interviews with market participants.

The ex post review showed that following the acquisition, the new car retailing market was significantly impacted by external factors, including COVID-19. These factors disrupted supply chains, effectively halting the supply of many leading brands of new cars into Australia. This resulted in extremely long wait times for some new car orders and increases in price in the form of reduced discounting by competing dealers – who typically purchase cars from the OEM and then compete by discounting them below the recommended retail price. These changes in market dynamics made it very difficult for market participants - and the ACCC - to determine the impact of the acquisition on competition as compared with impacts on price and service caused by external factors. However, some recent feedback has noted that competition between new car dealerships in the Newcastle and Hunter Valley region is similar to that which existed before the acquisition occurred. This is a preliminary indication that the divestment undertaking provided by AP Eagers has achieved its intended effect and addressed the concerns about loss of competition in the market of primary concern.

This review also provided some observations of consumer behaviour during a period of extremely constrained supply which resulted in very long wait times for new vehicles (up to 18 months) and increased prices. Notwithstanding that these observations have significant limitations, as outlined earlier in this report, some of these are:

- Demand for some car brands that prior to COVID-19 had a low market share appear to have increased, at least in the short term. This increase appeared to be due to a combination of the fact that these brands were available for immediate delivery and were considerably lower in price than some of the leading brands. It is difficult to reach any strong conclusions about this behaviour in relation to long term competitive dynamics, given the potential for it to be quite transient as supply for leading car brands slowly returns.
- Consumers did not demonstrate a willingness to switch to online sales avenues. Information received by the ACCC indicated that there was no significant trend toward online purchasing, despite longer wait times, increased prices at dealerships, and in some instances dealerships being closed due to COVID restrictions.
- Given that new cars could not be acquired across many car brands and types, the ACCC received some anecdotal feedback that some consumers who would have otherwise purchased a new car, were willing to consider a used car if it was available immediately.

These observations were made during a period of extreme shock to the market, and are likely to have limited utility in predicting longer term consumer behaviour. However, they have provided some insight into the difficulties that the ACCC can face in making forward looking assessments about market dynamics. When considering the scope of the market, and likely substitutes, during a period of disruption (e.g. pandemics or periods of instability), the ACCC needs to be cognisant of likely longer term prevailing market conditions and whether observed changes in the market are simply transient. For example, if it is anticipated that wait times for consumers will eventually return to normal, the ACCC must closely consider whether new substitutes (e.g. in this case cars manufactured in China) will continue to be purchased by consumers in the same volumes. Put simply, these observations highlight the difficulties and dangers in observing the market simply at a point in time, and re-enforce the need for the ACCC to look closely at longer term trends of consumer behaviour.

5. ANZ Terminals - GrainCorp Liquid Terminals

Merger review commenced: 9 May 2019

Statement of Issues: 25 July 2019

Outcome: Not opposed subject to undertakings on 15 November 2019

ACCC decision

ANZ Terminals sought to acquire GrainCorp Liquid Terminals (**GLT**).

Prior to the acquisition, ANZ Terminals and GLT were competing port-side bulk liquid storage providers. Both parties provided storage for the following bulk liquid storage products including edible oils, tallow, fats, non-flammable industrial chemicals and base oils. The locations in which the parties operations overlapped in the supply of port-side bulk liquid storage were the Port of Melbourne, Port of Adelaide and Port Kembla.

The ACCC considered that:

- Competition is closest between providers of storage at the same port, or, in the case of New South Wales, between providers at ports that are close to each other.
- The closeness of competition between storage providers may be influenced by the specifications of the tanks they have and the types of liquids they are designed to store.

During its review of the acquisition, the ACCC found that:

- At the Port of Melbourne, ANZ Terminals and GLT were the two largest providers of port-side bulk liquid storage in terms of capacity, and overlap in the provision of storage for base oils and edible oils and fats. Other competitors were Stolt and Anchor Tank. The ACCC considered that the potential for expansion by competitors and the threat that a customer would leave its existing provider and have new tanks built by an alternative provider is a key driver to competition. Consequently, the ACCC concluded that vacant land and the ability by an existing storage provider to expand was a significant competitive constraint on ANZ Terminals and GLT.
- In South Australia, ANZ Terminals and GLT were the only independent providers of port-side bulk liquid storage and overlapped in the provision of storage for non-flammable chemicals and tallow. Before the acquisition, ANZ Terminals operated a bulk fuel terminal at Pelican Point and a separate bulk liquid storage terminal at Osborne. GLT operated a bulk liquid storage terminal at Largs Bay. At the commencement of the ACCC's public review, the parties offered a proposed undertaking pursuant to section 87B of the CCA to divest the Osborne facility.
- In New South Wales, ANZ Terminals (Port Botany) and GLT (Port Kembla) overlapped in the supply of port-side bulk liquid storage of base oils and were the only two providers with bulk liquid tanks set up for this purpose. There are two other bulk liquid storage providers in New South Wales, Vopak in Port Botany and Stolt at Port of Newcastle, though neither have facilities suitable for storing base oils. The ACCC raised concerns in its Statement of Issues that ANZ Terminals and GrainCorp

Liquid Terminals were likely the closest competitors for the provision of bulk liquid storage for base oils, and that alternatives were unlikely to provide a strong constraint.

The ACCC decided not to oppose the acquisition after the parties restructured the transaction to carve out the Port Kembla assets and provided an undertaking under section 87B of the CCA to divest its bulk liquid storage in South Australia and not to acquire any further interests in land at the Port of Melbourne for a period of 10 years without receiving ACCC clearance.

Ex post findings

The ANZ Terminals/GrainCorp Liquid Terminals was identified as a suitable candidate for ex post review because the ACCC considered that it would present an opportunity to review a merger in a highly concentrated market and the effectiveness of a remedy which included a separate structural and behavioural component.

The ACCC's analysis is based on qualitative information gathered from interviews with market participants as well as some written information requests.

The ex post review found that there does appear to be a perception that competition has reduced since the transaction occurred, particularly at the Port of Melbourne. This appears to be partly because some market dynamics that the ACCC considered would constrain the merged entity post-transaction have not played out as anticipated. For example, rivals at the Port of Melbourne have not meaningfully expanded their operations into neighbouring vacant land, and the threat of future expansion does not appear to be operating as a significant competitive constraint on the merged entity.

During the initial review, the ACCC had regard to the fact that the development of new bulk storage facilities requires significant capital investment, and commonly requires a customer to underwrite the new storage tanks with long-term storage contracts. The ACCC was satisfied that if customers were facing small but significant increases in price, new storage facilities would be underwritten. However, the ex post review has indicated that barriers to entry and expansion of these facilities are higher than the ACCC anticipated. COVID-19 and its associated supply chain issues appear to have exacerbated the risk associated with investing in new storage assets due to the volatility of the market, with some customers unsure of their long-term demand requirements. Accordingly, customers have been unwilling to underwrite new storage tanks with long-term contracts. The extent and impact of these external shocks in this market could not have been predicted at the time of the initial review. As such, the ACCC was unable to appreciate the delicate nature of this entry constraint especially when the demand profiles of the customers could change drastically.

Consistent with ACCC views during the initial review, alternative storage options such as containers or flexi-bags do not appear to closely constrain providers of bulk liquid storage. Any constraint imposed by alternative storage options was further reduced following the acquisition – at least during the period of market disruption caused by COVID-19 - as market feedback received during the ex post review indicates that the cost of alternative options increased significantly. This increase in cost was predominantly driven by the increase in cost of shipping via containers.

6. Bauer Media - Pacific Magazines

Merger review commenced: 23 October 2019
Statement of Issues: 19 December 2019
Outcome: Not opposed on 26 March 2020

ACCC decision

Bauer Media sought to acquire the business assets of Pacific Magazines. Prior to the acquisition, Bauer and Pacific were competing publishers of content in magazines (print and digital editions) and digital (websites).

The ACCC raised concerns about the impact of the merger on competition by reducing the number of major print magazine publishers in key magazine categories from two to one. These categories were 'general celebrity and entertainment content' in which Woman's Day (Bauer) and New Idea (Pacific) compete) and 'real life and puzzle' content in which Take 5 (Bauer) and That's Life (Pacific) compete.

The ACCC concluded that the proposed acquisition is unlikely to substantially lessen competition in any impacted market. The ACCC took into account that magazine publishers have suffered significant and progressive circulation and revenue declines in the last ten years, which has resulted in less investment in content, fewer retail promotions and the closure of magazine titles. Many readers of the key titles published by Bauer and Pacific were increasingly turning to online sources of that content, and were likely to continue to do so in the future. The ACCC also noted that due to the declining nature of the industry, further magazine titles closures were likely to occur regardless of the proposed acquisition.

The ACCC considered that these constraints would mean the combined Bauer/Pacific would not be able to increase prices or decrease the quality of its product significantly, despite the parties competing closely with some titles.

The ACCC also considered the impact of the merger on markets for the acquisition of content (including exclusive photos) from third party providers. In relation to the acquisition of photography content, the ACCC found that there was unlikely to be a substantial lessening of competition. In relation to the acquisition of photography in general, there were many other publishers competing to acquire photographs. In relation to exclusive photography content, the ACCC found that the merger parties' use of such photographs is already quite limited and is likely to decrease with or without the acquisition.

Ex post findings

Following the merger, Bauer (combined with Pacific) was acquired by Mercury Capital and rebranded to Are Media.

The Bauer/Pacific acquisition was identified as a suitable candidate for ex post review because the ACCC considered that it would present an opportunity to gain insights into the accuracy of ACCC predictions and information provided by the parties, in the context of a market going through a period of significant decline. The ACCC's analysis of this ex post review is based on qualitative information gathered from interviews with market participants and quantitative information requested from Bauer.

The ex post review showed that market dynamics since the acquisition have played out as the ACCC predicted, indicating that the analysis was sound and the information provided by the merger parties was reliable. In particular, we found that the magazine industry continues to experience decline and there are external factors – including the threat of readers moving to online content – that are constraining Bauer from acquiring and leveraging any market power gained as a result of the merger. This is consistent with the ACCC's initial view that future magazine title closures were likely in the counterfactual and supports the ACCC's initial analysis and decision.

The review did show that cover prices for both impacted magazine categories have increased since the acquisition, though this was due to factors which caused increased production costs. It also showed that the magazine industry was impacted by COVID-19, during which the industry experienced a brief period of increased sales, though market conditions have normalised and declines have resumed.

The ex post review also considered the impact of the acquisition on markets for the acquisition of exclusive photography content. Market feedback is that there has been a decline in sales since the acquisition, though some market participants noted that the use of these photographs was already quite limited and would have reduced regardless of the acquisition.

During this review the parties made claims about the declining nature of both the magazine sector generally and specific aspects of it, such as the acquisition of exclusive photography content. Such claims about declining markets are often made by merger parties in order to justify a reduction in competition. It is important to note that simply arguing a market is in decline will not be enough to satisfy the ACCC that the acquisition will not result in a substantial lessening of competition. Any such claims will be strongly tested with compelling evidence required to support them. They will also be considered in context, noting that in this particular review the merged entity continued to face competition from the rising influence of online content.

The ACCC also sought feedback on Bauer's subsequent acquisition of Ovato Retail Distribution which resulted in some vertical integration. Findings indicate that there has not been any significant change to market dynamics since that acquisition, though there have been increases to distribution costs as a result of the increased costs of providing services.