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Woolworths' acquisition of controlling interest in Petstock not opposed, as Petstock gives undertakings relating to past acquisitions

The ACCC has accepted a court-enforceable undertaking from Petstock Pty Ltd (Petstock) to divest a package of sites and assets, including 41 retail stores, following the ACCC's enforcement investigation into past acquisitions by Petstock.

The ACCC will not oppose Woolworths' (ASX: WOW) proposed acquisition of a 55 per cent controlling interest in Petstock, and has also accepted a court-enforceable undertaking from Woolworths to support the Petstock divestiture.

Petstock is Australia's second largest specialty pet retailer and offers a broad range of pet products and services in-store and online.

Petstock's past acquisitions

"Shortly after the ACCC commenced its review of Woolworths' proposed acquisition of a majority interest in Petstock, it emerged that Petstock had completed a large number of acquisitions in the pet industry in recent years that had not been notified to the ACCC. In March 2023, the ACCC began investigating those previous acquisitions," ACCC Chair Gina Cass-Gottlieb said.

As a result of its investigation, the ACCC had significant concerns that Petstock's acquisitions of the Best Friends Pets, Pet City, and Animal Tuckerbox chains and the Pet & Aquarium Warehouse store in Eltham, Victoria may have contravened the Competition and Consumer Act.

"Petstock's acquisitions removed some of the few remaining chains of specialty pet retail stores that competed against Petstock and Petbarn," Ms Cass-Gottlieb said.

The ACCC also had concerns Petstock had acquired its closest competitors in several local markets in Victoria, Western Australia, New South Wales, the Australian Capital Territory, Queensland and Tasmania.

After the ACCC raised these competition concerns with Petstock and Woolworths, they each offered to provide court-enforceable undertakings to resolve the concerns.

"Under the current informal merger regime in Australia, there is no law requiring merger parties to notify the ACCC of proposed mergers and acquisitions or to wait for clearance before they can proceed," Ms Cass-Gottlieb said.

"Petstock's decision to make numerous acquisitions of this scale without notifying the ACCC demonstrates the limitations of Australia's current merger regime. It relies on the goodwill of businesses to voluntarily notify the ACCC and await an outcome. Absent this goodwill, businesses may be able to amass scale through serial and non-notified acquisitions which may fly under the ACCC's radar."

"The ACCC is particularly concerned that there may be anti-competitive acquisitions taking place without our knowledge under our current voluntary regime," Ms Cass-Gottlieb said.

“While in this case, the ACCC eventually became aware of the past acquisitions, we cannot know how many other acquisitions have taken place without notification to the ACCC, with potential anti-competitive consequences. And while we have secured a divestiture that resolves our concerns in this instance, this is a far less efficient and effective way to maintain the competitiveness of Australia's economy. Seeking to restore the competition lost after the fact is not always possible, and is a poor substitute for preventing the loss of competition in the first place.”

“The ACCC needs better laws to enable it to become aware of and properly scrutinise mergers before they occur, and to prevent those likely to substantially lessen competition. Consumers ultimately bear the risk that anti-competitive mergers will complete without scrutiny and increase prices, reduce quality or reduce service levels,” Ms Cass-Gottlieb said.

Proposed acquisition of a controlling interest by Woolworths

Following the resolution of its investigation into Petstock's completed acquisitions, the ACCC will not oppose Woolworths' proposed acquisition of a 55 per cent controlling interest in Petstock.

“After extensive consultation with market participants and a comprehensive review of the parties' internal documents, data and research, we consider Woolworths' proposed acquisition of a 55 per cent interest in Petstock is unlikely to substantially lessen competition,” Ms Cass-Gottlieb said.

“Market feedback indicated that specialty pet retail and grocery are distinct channels in the pet industry, and specialty pet retail stores have a very different product and service offering to supermarkets and discount department stores.”

The ACCC also concluded it was unlikely that Woolworths could leverage its retail position into the specialty pet industry in an anti-competitive way.

While some market participants were concerned that the proposed acquisition would enable Woolworths to leverage its buyer power and pressure suppliers to stock key specialty products in its supermarkets and Big W, most suppliers who supply both Woolworths and Petstock were not concerned.

Further information, including the undertakings accepted by the ACCC, can be found on the ACCC's public register at [Woolworths Group Limited \(Woolworths\) – Petstock Pty Ltd \(Petstock\)](#)

Background

Under the Competition and Consumer Act, the ACCC can seek court-ordered divestiture of shares or assets acquired in breach of the merger law for three years after completion of a transaction and can also seek penalties orders for up to six years.

The divestment commitments

As part of its undertaking, Petstock will be required to divest 41 specialty pet retail stores, 25 co-located veterinary hospitals, four brands and two online retail stores, including:

- Best Friends Pets and OurVet brands, including the Best Friends Pets website, plus 26 Best Friends Pets stores and 25 co-located veterinary hospitals in New South Wales, Victoria, Queensland and the Australian Capital Territory,
- My Pet Warehouse brand, including its online store, plus three My Pet Warehouse stores, with two located in Queensland and one in Western Australia (now Petstock Osborne Park),
- Pet City brand, plus 10 Pet City stores located in Western Australia,

- Animal Tuckerbox store located in the CBD of Launceston, Tasmania (now Petstock Launceston Central) and
- Pet & Aquarium Warehouse store located in Eltham, Victoria (now Petstock Eltham Central).

The ACCC has also accepted an undertaking from Woolworths containing obligations to support Petstock's divestiture as a majority shareholder following the acquisition.

Petstock

Petstock Group is the second largest omni-channel Australian specialty pet retailer with a broad range of pet products, rural supplies, and pet services in-store and online. Omni-channel retailers offer both physical (bricks-and-mortar) and online (e-commerce) channels.

The transaction

The ACCC commenced a review of Woolworths' proposed acquisition on 24 January 2023. In March 2023, the ACCC suspended its review to obtain further information from Petstock, and opened an enforcement investigation into Petstock's completed acquisitions.

The investigation

Since 2017, Petstock has acquired many other specialty pet retailers including Best Friends Pets, Pet City, Animal Tuckerbox and Pet & Aquarium Warehouse in Eltham, Victoria.

The ACCC considers that in markets involving retail chains, competition may occur at more than one geographic level. While all retailers compete to attract customers from other similar retailers in the same local area, retail chains also compete with each other across a broader area ("chain-on-chain competition") through elements of their overall retail offers, which may be set nationally, regionally or state-wide.

The ACCC was concerned that the acquisitions of the Best Friends Pets, Pet City, and Animal Tuckerbox chains resulted in the loss of some of the few remaining specialty pet retail chains competing against Petstock and Petbarn. The ACCC's investigation indicated that before these acquisitions:

- Best Friends Pets was the third largest omni-channel competitor with a strong presence across multiple Eastern states,
- Pet City had a considerable presence in Western Australia (where fewer specialty pet retail chains compete), and
- Animal Tuckerbox had a significant presence in Tasmania (where fewer mainland specialty pet retail chains compete).

The ACCC also had concerns in relation to a significant number of local markets in Victoria, Western Australia, New South Wales, Australian Capital Territory, Queensland and Tasmania, where Petstock's existing specialty pet retail stores overlapped with some stores in the Best Friends Pets (including My Pet Warehouse), Pet City and Animal Tuckerbox chains or the Pet & Aquarium Warehouse (Eltham) specialty pet retail store.

For example, in Melton, Victoria and Erina, New South Wales, Petstock acquired nearby Best Friends Pets stores, leaving no other specialty pet retail chain stores within a 5 km radius in either local area.

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