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COMMERCE COMMISSION

# Decision No. 694

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

**AMP Limited**

and

**AXA Asia Pacific Holdings Limited**

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| **The Commission:** | Dr Mark Berry<br>Sue Begg<br>Anita Mazzoleni |
| **Summary of Application:** | AMP Limited submitted an application seeking clearance to acquire the Australian and New Zealand operations of AXA Asia Pacific Holdings Limited. |
| **Determination:** | Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition. |
| **Date of Determination:** | 18 June 2010 |

## THE PROPOSAL

1. A Notice under s 66(1) of the Commerce Act 1986 (the Act) was registered on 30 April 2010. The notice sought clearance for AMP Limited (AMP or the Applicant) to acquire the Australian and New Zealand operations of AXA Asia Pacific Holdings Limited (AXA).

## DECISION

2. The Commission considers that the proposed acquisition would result in the aggregation of market share in the following national markets:
    - the provision of wealth protection products and services;
    - the provision of retail funds management products and services;
    - the provision of wholesale funds management products and services; and
    - the provision of financial planning and advisory services.
3. The Commission considers that competition from existing participants in the affected markets is likely to be sufficient to constrain the combined AMP and AXA. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any of the relevant markets.

## ANALYTICAL FRAMEWORK

4. The Commission applies a consistent analytical framework to all its clearance decisions.[1] The first step is to determine the relevant markets. As acquisitions considered under s 66 are prospective, the Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely in the defined market(s). Hence, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
    - with the acquisition (the factual); and
    - in the absence of the acquisition (the counterfactual).
5. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the relevant markets between those two scenarios. To analyse the extent of competition in the factual and counterfactual, the Commission considers:
    - existing competition;
    - potential competition;
    - other competition factors, such as the countervailing market power of buyers and suppliers; and
    - co-ordinated behaviour – whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.

[1] Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

## THE PARTIES

### The Acquirer - AMP

6. AMP is a wealth management and protection company which is listed on the Australian and New Zealand stock exchanges. The company, through its New Zealand subsidiaries, provides a range of financial products and related services, including KiwiSaver, corporate superannuation, retail and wholesale funds management, life insurance and financial planning advice.

### The Target – AXA

7. AXA Asia Pacific Holdings is responsible for the global AXA Group's financial services businesses in the Asia Pacific region. It is listed on the Australian stock exchange. Its parent, AXA SA (based in Paris), owns 54% of AXA Asia Pacific with the balance held by public shareholders. As stated, the proposed acquisition involves only the Australian and New Zealand operations of AXA Asia Pacific. If the proposed transaction proceeds, AXA SA intends to purchase the Asian operations of AXA Asia Pacific, and all of its assets and business, outside Australia and New Zealand. Through its New Zealand subsidiaries, AXA provides a range of financial and related services that are essentially identical to those provided by AMP in New Zealand.

## OTHER PARTIES

8. Apart from AMP and AXA, there are a large number of companies involved in the supply of wealth protection and/or wealth management products and services in New Zealand. These include:
   - ANZ National Bank/ING;
   - ASB Bank (ASB)/Sovereign;
   - Tower;
   - Asteron Life/Guardian Trust/Tyndall Investment Management;
   - Westpac /BT Funds Management;
   - smaller providers such as Fidelity Life, Mercer, Bank of New Zealand (BNZ), Milford Asset Management, Brook Asset Management, and Fisher Funds Management;
   - providers of retail wrap platform services, such as FNZ Limited and Aegis Limited (100% owned by ASB);[2] and
   - various financial planners and advisers, some of whom are aligned to a fund manager and have a quota of that manager's products to sell – others of whom are independent and are unrestrained in the products they sell.

## INDUSTRY BACKGROUND

9. As noted above, AMP and AXA each provide a wide range of wealth protection and wealth management products and services in New Zealand.

[2] See para 15 for a description of wrap platforms.

**Wealth Protection**

10. Wealth protection is the provision of both life risk and income protection insurance products. Within this category there is a range of products which provide cover for various contingencies, including term life risk, general accident and disablement, trauma, income replacement, and income protection.[3]

11. The major providers of wealth protection products in New Zealand are Sovereign, AMP, AXA and Asteron. ANZ National/ING, Westpac, BNZ, Tower and Fidelity are other market participants.

12. In addition, financial planners and advisers distribute wealth protection products to consumers. This activity is discussed below.

**Wealth Management**

13. Wealth management is the process by which funds that individuals and businesses have available for investment are distributed, consolidated and invested in assets with the aim of achieving the greatest possible returns, taking into account the objectives, needs and risk appetite of the investors.

14. Attached as Appendix A is a diagram showing the flow of investor cash through the wealth management industry, the classes of industry participants, and the flow of advice, fees and commissions.

15. The range of products and services offered by the wealth management industry can be categorised as follows:

    - retail funds management, which involves the pooling of individual investors' cash in unit trusts, corporate superannuation schemes and KiwiSaver funds, and which are invested, either directly or via wholesale funds managers, in assets that provide returns. The major growth in this sector has been generated by KiwiSaver, a work–based savings scheme set up by the Government in 2007. The attractiveness to savers of the KiwiSaver scheme has resulted in a corresponding decline in the use of personal and corporate superannuation schemes. Most of the industry members contacted by the Commission consider that KiwiSaver will be the principal route for retail investment funds in the future. There are many retail funds managers, including the parties to the acquisition, ANZ National/ING, ASB/Sovereign, Westpac/BT, Tower, Asteron/Tyndall, KiwiSaver providers and others;
    - wholesale funds management, which involves the consolidation of retail funds and/or the funds of large (and in some cases individual) investors, and which are invested in assets that provide returns. AMP's wholesale fund management is conducted in-house whereas AXA outsources this activity to other funds managers;
    - financial planners and advisers provide distribution channels from investors to providers of wealth protection and wealth management products. Financial advisers are individuals or groups of individuals that provide investment assistance to their clients based on factors such as the needs, objectives and risk profiles of those clients. Such advisers can either be employed directly by the provider of a wealth protection or management product, or aligned to the provider of such a product by an agreement to mostly sell that person's product,

[3] New whole of life and endowment policies are no longer available in New Zealand.

or they may operate completely independently of any provider. Financial planners and advisers receive their income from fees charged to their clients and from commissions based on the value of investment products purchased on the basis of their recommendations. Tighter regulation of financial advisers and planners is planned for introduction and this is likely to accelerate the industry's move from commissions on sales to fees for service income paths; and

- retail investment platforms are an important link between the providers of investment products, financial planners and advisers, and reasonably high net worth individual investors (also known as wrap platforms). These computerised platforms provide a consolidated administrative service (including reporting, record keeping, tax payments, trading and custodial services) of an investor's individual investment products.

## MARKET DEFINITION

16. Both AMP and AXA are engaged in the provision of a wide range of wealth protection and wealth management products and related services, which gives rise to actual or potential aggregation in a number of product and functional markets.

17. The Applicant submitted that the proposed acquisition involves aggregation in:

    - the national market for the provision (including underwriting and distribution) of wealth protection or life insurance products (including life risk and income protection); and
    - the national market for the supply of funds management services, both retail (including corporate superannuation and KiwiSaver) and wholesale funds management; OR
    - separate markets for retail funds management and wholesale funds management services;
    - the national market for the retail supply of wrap platform services; and
    - the national market for the provision of financial planning and advisory services.

18. The Commission acknowledges that defining markets in the wealth management and wealth protection industries is complex and a number of wider or narrower market definitions could be adopted. However, the Commission considers that regardless of whether narrower or broad markets are used, there is unlikely to be any material change to the competition analysis below. The Commission also notes that the markets at issue are dynamic and therefore it may be necessary for the Commission to define markets differently in future situations.

19. The Commission considers that all of the relevant product/service markets are national in their scope.

### Wealth Protection Products and Services

20. The Commission considers that for the purpose of considering this application, there are discrete product markets for the supply of wealth protection products and services as described above.

21. While from the demand-side perspective these products are not substitutable, as they insure against different events, the Commission is satisfied that from the supply-side perspective they are highly substitutable. This supply-side

substitutability is supported by the fact that all the major life insurance companies offer a full range of wealth protection products.

**Wealth Management Products and Services**

22. Appendix A traces the flow of funds from investors, savers and insured persons to the ultimate purchase of assets (shares, property, commodities etc) that provide a return to those persons. In the discussion below, the Commission concludes that for the purposes of this application it is appropriate to define and analyse separate markets for the following wealth management activities in which both AMP and AXA are involved:

- the supply of retail funds management products and services (including the provision of corporate superannuation, KiwiSaver schemes and retail wrap platform services);
- the supply of wholesale funds management products and services; and
- the supply of financial planning and advisory services.

**Retail and Wholesale Funds Management Products and Services**

23. In general, funds management involves:

- the provision of investment products that will attract the cash of either retail or wholesale investors and savers;
- the consolidation of that cash to provide scale; and
- the purchase, using the consolidated cash, of assets that will provide a return on the capital invested or saved.

24. The Commission has decided to define separate markets for the supply of retail and wholesale funds management services. This has been done to reflect the distinct customer types of the two activities. Retail funds management is concerned with the pooling of the relatively small amounts of cash of individual investors, savers and insured persons, while wholesale funds management concerns the consolidation of the relatively large amounts of cash accumulated in retail funds (and by other large investors) for the purchase of various categories of assets that will provide a return on the capital invested. In one case the customers are individual retail investors and in the other case the customers are institutions, KiwiSaver providers, banks, corporate superannuation schemes, and retail funds managers.

25. In this respect, the Commission notes that it is common for financial institutions to operate their retail and wholesale businesses in separate divisions. AMP and AXA are examples of funds managers that adopt this approach.

26. For the purpose of this application, corporate superannuation and Kiwi Saver are both included in the retail funds management market. The Commission recognises that the KiwiSaver scheme is particularly attractive for many investors due to the tax incentives and employer contributions associated with it. However, when deciding to invest in KiwiSaver, an investor must also trade off these benefits against the restrictions placed on the withdrawal of funds. It is possible that an investor who values flexibility may decide to provide for their retirement income using other retail investment products. In any event, from a supply-side perspective the Commission is satisfied that there is a high degree of substitutability between KiwiSaver, corporate superannuation and other forms of retail investment. Indeed, many of the funds providers have KiwiSaver products.

27. Discrete markets could be defined for the provision of retail wrap platforms (that is, the software and back office functions) and the supply of retail wrap platform services. However, since AXA owns the Assure retail wrap platform, used by AXA's aligned financial advisers and their retail investor clients, but AMP contracts for access to the FNZ platform for its investor clients, there is no aggregation of market share in the provision of retail wrap platforms. Additionally, the level of aggregation in the supply of retail wrap platform services resulting from the proposed acquisition would be minimal.

28. Therefore, given the absence of any need for a competition analysis of retail wrap platforms, for the purposes of this application the Commission has treated the provision of wrap platform services to investors as forming part of the retail funds management market. This is because platforms provide a conduit by which retail investors can invest cash, via their financial adviser, in various retail and/or wholesale funds schemes. Platforms are merely vehicles that allow for and provide custody, trading, and the reporting of the value of individual investments and tax positions to retail investors.

**Financial Planning and Advisory Services**

29. Both AMP and AXA have relationships with financial advisers and planners. In the case of AMP, these are essentially exclusive, whereas they are less closely aligned in the case of AXA. The financial advice activity involves the provision of investment advice to retail consumers by advisers based on their research, expertise and experience. Advisers may be:

    - "owner operated" – that is, on the staff of the relevant institution and are paid a mix of salary and commission on the value of the investment products sold;
    - aligned – in which case the adviser will have a quota of the relevant institution's products to sell but may sell other investment products when that quota is met – advisers are closely aligned (high quota) in the case of AMP and less closely aligned (lower quota) in the case of AXA. These advisers (together with non-aligned advisers) may receive their income via "fees for service" or commissions or a mix of the two; and
    - non-aligned – in which case the adviser is free to recommend any investment product.

30. The Commission is satisfied that from a demand-side perspective these different types of advisers are substitutes and all form part of the market for the provision of financial planning and advisory services.

**Conclusion on Market Definition**

31. In summary, the Commission considers that for the purpose of examining this application, the relevant markets are the national markets for:

    - the provision of wealth protection products and services (the wealth protection market);
    - the provision of retail funds management products and services (the retail funds management market);
    - the provision of wholesale funds management products and services (the wholesale funds management market); and
    - the provision of financial planning and advisory services (the advisory market).

## FACTUAL/COUNTERFACTUAL

### Factual

32. In the factual scenario, AMP would acquire the Australian and New Zealand operations of AXA and would merge their New Zealand operations.

### Counterfactual

33. The Applicant stated in its application that the counterfactual is likely to be the status quo, with AMP and AXA remaining independent providers. At the time the application was lodged, the Australian Competition and Consumer Commission (ACCC) had announced that it opposed the proposed acquisition by National Australia Bank Ltd (NAB) of AXA, but did not oppose a proposed acquisition by AMP. The ACCC concluded that the NAB/AXA acquisition would likely result in a substantial lessening of competition in the market for retail investment (wrap and master trust) platforms, but that the AMP/AXA proposal would be unlikely have that effect.

34. [ ], contended that NAB has a range of options in relation to the recent ACCC decision and is pursuing those options. It has submitted that an acquisition of AXA by NAB continues to be a likely, or probable counterfactual. In this regard the Commission notes from media reports that NAB is currently in discussions with the ACCC with a view to possible divestment of assets to address the ACCC's competition concerns. This suggests that the NAB remains a viable contender for AXA's Australian and New Zealand operations.

35. The Commission cannot predict the outcome of the ACCC's consideration of NAB's proposed acquisition of AXA, including the future steps NAB may take to address the ACCC's concerns. Accordingly, it is difficult to determine at this time whether a NAB/AXA acquisition is a likely counterfactual. However, the Commission considers that even if a NAB/AXA counterfactual were adopted, it would not materially change the competition analysis. BNZ has a very small wealth protection insurance business having a [ ]% share of current premiums in force. In 2004, BNZ sold its entire funds management business to AXA. Further, BNZ has only a small number of financial advisers and planners on its staff to provide a service to its banking customers. If NAB/BNZ were to acquire AXA, there would be only a minimal degree of aggregation of market share in any of the relevant markets. Therefore, the Commission considers that such an acquisition would be essentially the same as the status quo counterfactual in respect of competition effects.

36. In view of these factors, the Commission considers that the status quo represents the likely counterfactual for the purposes of assessing this application.

## COMPETITION ANALYSIS

### Wealth Protection Market

37. When calculating the market shares for the wealth protection market, the Applicant and other industry participants have relied on independent information compiled by the Investments Savings and Insurance Association. On the basis of in force premiums, the combined AMP/AXA would increase its share of this market from around [ ] % to approximately [ ]%.[4]

[4] The market share estimates are as at 31 March 2010.

38. The Commission considers that strong and vigorous competition would continue to be provided by Sovereign (100% owned by ASB), which holds around a [ ]% market share. The balance of market share would be held by a number of other parties, including Asteron Life, ING (100% owned by ANZ National Bank), Tower and Fidelity Life. While each of these parties holds less than a [ ]% market share, they are nevertheless well established and significant market participants that are capable of providing effective competition, and they have the potential to expand given the appropriate market signals.

39. [ ] submitted that a merged AMP/AXA would hold high market shares in conventional wealth protection products and other risk products, such as whole of life and endowment policies as well as group risk products. The Commission notes that, if it were to define separate markets for insurance products, post-acquisition, AMP would hold [ ]% of whole life and life endowment business in respect of "in force" premiums and [ ]% of new business. However, the Commission has been informed that such legacy products are in decline, and, represent less than [ ]% of new business in the total life insurance market. Further, neither AXA nor AMP sells such policies any longer. This is because consumers now prefer wealth protection policies which have no investment component and purchase any investment products they require separately.

*Conclusion on the Wealth Protection Market*

40. In light of these factors, the Commission concludes that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the national wealth protection market.

**Retail Funds Management Market**

*Overview*

41. As explained, retail funds management comprises the supply of products for individual investors, such as traditional unit trusts, other retail fund products, the KiwiSaver scheme, corporate and individual superannuation schemes, some of which are managed for investors by retail wrap platform services.

*Existing Competition- Retail Funds Management*

42. Market share information for the retail funds management market has been derived from Fundsource, an independent market analyst. While there is some disagreement as to the respective definitions of retail and wholesale funds, Fundsource data is considered by industry participants to provide the most comprehensive and best measures of market share.

**Table 1: Estimated Market Shares for Total Retail Funds Under Management as at 31 December 2009**

| Participant | Funds Under Management ($b) | Share (% approx) |
|---|---|---|
| AMP | [ ] | [ ] |
| AXA | [ ] | [ ] |
| *Combined Entity* | **[ ]** | **[ ]** |
| ING (Including ANZ and National) | [ ] | [ ] |
| ASB (including Sovereign) | [ ] | [ ] |
| BT (including Westpac) | [ ] | [ ] |
| Others[5] | [ ] | [ ] |
| Total | [ ] | 100 |

Source: Fundsource Retail Managed Funds Trends and Market Composition Report (December 2009)

43. Table 1 indicates that of the total retail funds under management, the combined entity would have a market share of around [ ]% and the three-firm concentration would be [ ]%, which is inside the Commission's safe harbour guidelines.

44. The Commission considers that this market would remain highly competitive in the factual with several large and highly resourced companies, such as ING and ASB, together with a number of smaller providers, such as Tower, Kiwibank and Asteron Life/Tyndall, providing an effective competitive constraint.

*KiwiSaver*

45. As noted above, the Commission has decided for the purpose of this application to treat the funds flows generated by KiwiSaver and corporate and private superannuation schemes as forming part of the retail funds market. KiwiSaver is viewed by industry participants as the major vehicle for growth of retail investment, currently accounting for around $4.5b, but the total funds under management in this scheme are expected to rise substantially in future.

46. AMP and AXA are two of six Government appointed default KiwiSaver providers. If an entrant into the scheme is not enrolled into a preferred provider, he or she will be automatically allocated to a default provider on the basis of an even handed rotation between the six providers. Industry participants interviewed expressed concern that the proposed acquisition would result in the merged AMP/AXA accounting for a market share of new default entrants into the scheme of around 34%. The other four default providers would continue to receive about 17% of new entrants. The Commission was informed that currently about 40% of new KiwiSaver investors are currently allocated to default providers. Further, the Commission notes that about half of all current KiwiSaver funds are invested in the default funds.[6]

47. [ ] submitted that as a result of the proposed acquisition the merged AMP/AXA would have control over a large proportion of future KiwSaver fund flows and,

[5] Including Tyndall/Asteron, Tower, Mercer and Forsyth Barr.
[6] *Report of the Government Actuary (in respect of the KiwiSaver Act 2006) for the year ended 30 June 2009*, p.8.

given the dominance of KiwiSaver over other investment flows, this could result in a high degree of market concentration in the future.

48. [ ].

49. Assuming that the status quo applies post-acquisition in respect of default providers, the Commission has considered the competition implications of aggregating AMP and AXA as default providers as well as the wider impact of the proposed acquisition on the KiwiSaver scheme itself.

50. The Commission is of the view that as a consequence of aggregating two of the six default providers, the combined entity would have an advantage in securing the mandated contributions of new entrants who are allocated to the default scheme and who currently account for about four to five of every 10 new entrants into KiwiSaver.

51. However, the Commission considers there are factors that offset that apparent advantage. First, the combined AMP/AXA would account for around [ ]% of total KiwiSaver funds (including default and nominated), which is similar to the market shares of ING and ASB, currently the two largest managers of KiwiSaver products. Secondly, all the major trading banks (i.e. ANZ/National, ASB and Westpac) have an extensive branch network which is not duplicated by either AMP or AXA. This direct contact allows the banks, via tellers and "front of house" sales persons, to attract default savers into their own schemes. AMP and AXA advised that they each were losing a significant number of those that are enrolled in their KiwiSaver schemes via the default path. The loss rate for the two companies was between [ ] of those KiwiSavers enrolled under the default scheme.

52. Additionally, competition for KiwiSaver funds is intense with a large number of other KiwiSaver providers offering consumer choice. Kiwibank has recently announced the commencement of its own scheme.[7]

53. The Commission concludes that in light of the strong competition that would continue to characterise the retail funds management market, the proposed acquisition will not have, or would not be likely to have the effect of substantially lessening competition in this market.

**Wholesale Funds Management Market**

54. As outlined previously, the wholesale funds management market essentially involves the consolidation of retail funds as well as the investments of larger investors.

55. On the basis of data derived from Fundsource, market shares for the wholesale funds management market are set out in Table 2.

[7] Previously Kiwibank acted as the retail front for the KiwiSaver scheme operated by Mercer.

**Table 2: Estimated Market Shares for Total Wholesale Funds under Management as at 31 December 2009 Year**

| Participant | Total Funds Under Management $b | Share (% approx) |
|---|---|---|
| AMP | [ ] | [ ] |
| AXA | [ ] | [ ] |
| *Combined entity* | **[ ]** | **[ ]** |
| ING | [ ] | [ ] |
| ASB | [ ] | [ ] |
| Tyndall (Including Asteron Life and Guardian Trust) | [ ] | [ ] |
| Tower | [ ] | [ ] |
| Others[8] | [ ] | [ ] |
| Total | [ ] | 100 |

Source: Fundsource

56. Table 2 indicates that in the wholesale funds management market the combined entity would account for around [ ]% of the market and the three–firm concentration would be [ ]%. This is inside the Commission's safe harbour guidelines.

57. The Commission notes that the combined entity would have the largest volume of funds under wholesale management with the next largest participant accounting for considerably less of the market. However, the Commission is of the view that post-acquisition there would remain strong competition from several large wholesale fund managers (e.g. ING and ASB), along with a large number of entities, albeit with relatively small market shares, but nevertheless significant entities in their own right. These would include Tower, Mercer, Kiwibank and Fisher Funds.

58. Having regard to the above factors, the Commission concludes that the combined entity would face sufficient competitive constraint in the factual from a number of existing market participants and the proposed acquisition will not have, or would not be likely to have the effect of substantially lessening competition in this market.

**Financial Planning and Advisory Services Market**

59. Financial and planning advice is available from a large number of advisers, some of which are employed by wealth protection and/or management providers, some of which are aligned to such providers, some that have an agreement to sell the products of providers, and others that are completely independent. The Ministry of Economic Development estimates that there are about 7,500 financial advisers in New Zealand, of which 5,000 could be categorised as authorised financial advisers.

60. AMP provides financial planning and advisory services through a network of about [ ] tightly-aligned advisers. Those advisers are only permitted to sell products from an AMP NZ approved product list and have an incentive to

[8] Including BT, Mercer and Public Trust.

promote AMP approved products. In contrast, AXA adopts a different business model in which it has an agreement with nearly [ ] advisers authorised to sell AXA products, but those advisers are not restricted to selling only AXA products.

61. Detailed market share data is not available on this market, which means that it is necessary to rely on the number of advisers belonging to the dealer groups to calculate market shares. However, as noted by [ ] the numbers of advisers or adviser groups is not the appropriate yardstick as certain advisers or adviser groups attract more clients and therefore generate more revenue than others. [ ] suggested that “funds under advice” by advisers or adviser groups was a better measure. The Commission is of the view that the competition analysis is unaffected irrespective of what measure is used.

62. While the proposed acquisition would result in the creation of the largest network of aligned (or unaligned) financial planners and advisers, there would remain numerous competitors. For instance, all the banks have advisers associated with their branches. In addition, there are numerous other adviser groups, including those such as Tower which are in-house and others, such as Camelot and Goldridge, which are operated independently. In addition, the Commission considers that there are no major obstacles to consumers switching to an alternative provider, such as in response to the merged entity increasing its fees or reducing its service levels.

63. In addition, the Commission is of the view that there are no apparent obstacles to new entry into this market. Although new legislation which is being introduced is likely to raise the entry standards into the financial advisory industry, the Commission considers that this is unlikely to materially change its views on the ease of entry.

64. For these reasons, the Commission concludes that implementation of the proposal would not result in a substantial lessening of competition in this market.

**Co-ordinated Market Power**

65. The Applicant has submitted that none of the markets affected by the proposed acquisition displays signs of co-ordinated market power and that there would not be any change as a result of the proposed acquisition. It identifies a number of factors that would preclude the exercise of co-ordination in the factual, including:

    - the relative ease of entry into the wealth protection and management markets;
    - the continual development of new products;
    - the differentiated nature of the product offerings; and
    - the presence of fringe competitors.

66. The Commission considers that there are factors which are likely to prevent the potential for co-ordination in the factual, including:

    - fringe competition from the providers of retail and wholesale funds management;
    - the relative ease of entry into the affected markets;
    - the asymmetry of market shares between the combined entity and the other market participants;
    - the differentiated product characteristics of wealth protection and management products; and

- the dynamic nature of the markets with new products being developed on an ongoing basis.

67. The Commission concludes that the scope for co-ordinated market power is unlikely to be increased such as to result in a substantial lessening of competition in the affected markets in the factual.

**OVERALL CONCLUSION**

68. Having considered the competition effects in each of the relevant markets, the Commission concludes that it is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the national markets for:

- the provision of wealth protection products and services;
- the provision of retail funds management products and services;
- the provision of wholesale funds management products and services and
- the provision of financial planning and advisory services.

## DETERMINATION ON NOTICE OF CLEARANCE

69. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to grant clearance for AMP Limited to acquire the Australian and New Zealand operations of AXA Asia Pacific Holdings Limited.

Dated this 18th day of June 2010

Dr Mark Berry

Chair