

ASX Announcement

Hastings Diversified Utilities Fund (HDF)

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11 May 2012

HDF notes the ACCC's market inquiries

Hastings Funds Management Limited (Hastings), as Responsible Entity for HDF, notes the announcement by the Australian Competition and Consumer Commission (ACCC) to conduct market inquiries into a proposal from APA.

The ACCC has set a tentative decision date on the proposal of 21 June 2012.

Please see the attached letter from the ACCC.

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11 May 2012

Dear interested party

APA Group proposed acquisition of Hastings Diversified Utilities Fund

The Australian Competition and Consumer Commission (**ACCC**) is an independent statutory authority that administers the *Competition and Consumer Act 2010* (the **Act**). Section 50 of the Act prohibits mergers and acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in a market.

Background and purpose

On 14 December 2011 the ACCC commenced a public review of the APA Group's (**APA**) proposed acquisition of Hastings Diversified Utilities Fund (**HDF**) (the **proposed acquisition**). In the course of its review, the ACCC identified a number of competition concerns with the proposed acquisition. Further information about this review including the ACCC's Statement of Issues dated 30 March 2012 can be accessed from the public Mergers Register at: www.accc.gov.au/mergersregister. The key concerns outlined in the Statement of Issues are summarised in **Attachment A**.

Prior to the release of the Statement of Issues, APA put forward an in-principle proposal to divest its 50 per cent interest in the SEA Gas pipeline and other behavioural elements relating to access and pricing for backhaul services (the **initial in-principle proposal**). The ACCC's preliminary view outlined in the Statement of Issues was that the initial in-principle proposal would not address the competition concerns outlined in the Statement of Issues.

In order to address the ACCC's competition concerns, APA subsequently put forward a new proposal to divest the Moomba to Adelaide Pipeline System (**MAPS**) and enter into behavioural obligations that would provide a negotiation/arbitration regime for parties seeking to construct points of entry and/or exit on the South West Queensland

Pipeline (**SWQP**) (collectively **the new in-principle proposal**). The new in-principle proposal replaces the initial in-principle proposal put forward by APA.

The purpose of this letter is to seek your views to assist the ACCC's consideration of whether the new in-principle proposal would be likely to alleviate the competition concerns identified in the Statement of Issues and whether the APA acquisition of the HDF assets minus MAPS raises any competition issues that were not previously identified by the ACCC.

APA's new in-principle proposal

The ACCC is now conducting market inquiries on the new in-principle proposal before beginning a process of considering any section 87B undertakings.

The fact that the ACCC is consulting on the new in-principle proposal should not be taken as an indication that the ACCC considers that an undertaking based on the terms put forward by APA is likely to be an acceptable remedy to the ACCC.

Should the ACCC consider that an undertaking based on APA's new in-principle proposal is capable of addressing the ACCC's competition concerns, the ACCC will need to be satisfied that the details contained in any section 87B undertaking offered by APA are capable of addressing all of the competition issues identified and would be effective.

Request for comments on the new in-principle proposal

The ACCC is seeking views from market participants to assist in its consideration of the new in-principle proposal to determine whether it will adequately address the competition concerns raised by the proposed acquisition. The ACCC is also seeking views from market participants to assist in its consideration of whether any other competition issues are raised that were not previously identified by the ACCC. The specific issues on which a response is sought and a description of the new in-principle proposal is set out in **Attachment B**.

If the information provided is of a confidential nature, you can be assured the details provided by you will be treated confidentially. That is, the ACCC will not disclose the confidential information to the merger parties or other third parties, other than to its advisors or consultants, without first providing you with notice of its intention to do so, such as where compelled to do so by law. Please note that any information provided by you that you believe to be of a confidential nature should be clearly marked or identified as such.

If you wish to provide a response, please do so by no later than **24 May 2012**. Responses should be emailed (preferably in PDF format) to mergers@accc.gov.au with the title: Submission re: *APA proposed acquisition of HDF (attention Parnos Munyard)*.

The ACCC has set a tentative decision date of **21 June 2012** regarding the new in-principle proposal and the proposed acquisition. The ACCC notes that the timing of its decision may vary depending on the nature and extent of any concerns raised

during the market consultation process and the ability of APA to respond to these concerns in a timely manner.

If you would like to discuss the ACCC's assessment of the acquisition or have any questions in relation to this letter, please contact Darrell Channing on (02) 6243 4925 or Parnos Munyard (02) 6243 1339.

Yours sincerely

A handwritten signature in grey ink, appearing to read 'Baethan Mullen', written in a cursive style.

Baethan Mullen
A/g General Manager
Merger Investigations Branch

Summary of competition issues set out in the ACCC's Statement of Issues of 30 March 2012

In its Statement of Issues of 30 March 2012, the ACCC stated that it was concerned that the aggregation of ownership of pipelines resulting from the proposed acquisition may give APA an increased incentive and/or ability to:

- raise transport charges on the MSP (Moomba to Sydney pipeline) and the MAPS (Moomba to Adelaide pipeline system), by removing constraints currently imposed by separate ownership of competing pipelines;
- no longer provide customised service solutions that currently exist as a result of separate ownership of different pipelines in the network;
- raise the price of ancillary services, by removing the competitive tension that currently exists as a result of the separate ownership of MAPS, MSP and QSN/SWQP; and
- increase the already significant barriers to entry in the market(s) for gas transportation and ancillary services.

The ACCC further stated that it was *unlikely* to be concerned that the aggregation of ownership of pipelines resulting from the proposed acquisition:

- would limit pricing transparency such that the prices of other pipelines not located in South East Australia would increase; and
- would increase APA's ability and/or incentive to foreclose gas-powered generators that operate in markets where APA currently operates electricity generation assets.

The ACCC's Statement of Issues dated 30 March 2012 can be accessed from the public Mergers Register at: www.accc.gov.au/mergersregister.

Summary of APA's new in-principle proposal

Divestiture of MAPS

Outline

APA has proposed to divest the Moomba to Adelaide Pipeline System (**MAPS**) shortly after its acquisition of HDF.

The key elements of the new in-principle proposal provide for:

- APA to divest MAPS to an independent purchaser, to be approved by the ACCC and in a timeframe agreed with the ACCC;
- a mechanism for the appointment of a divestiture agent to dispose of MAPS in the event that APA is unable to divest MAPS in the agreed sale period; and
- the appointment of an ACCC approved independent manager to maintain the independence and economic viability of MAPS until divestment occurs.

Questions for market participants

1. Whether the new in-principle proposal, as described above, would be likely to address competition concerns in relation to the proposed acquisition? Please explain
2. Would MAPS be a viable stand-alone business and would it be likely to be able to compete effectively with the merged entity on a lasting basis?
3. Identify any specific market issues or dynamics which the ACCC should pay particular attention to in considering the new in-principle proposal to divest MAPS.
4. The identity of any acquirer of MAPS is not yet known. Is there any potential acquirer who you consider would be likely to raise competition issues? Why?

Connection to SWQP

Outline

The second component of APA's new in-principle proposal involves a negotiation/arbitration regime for parties seeking to construct points of entry and/or exit on the SWQP. The new in-principle proposal would seek to replicate the relevant components of regulation under the National Gas Law and Rules. The new in-principle proposal would likely include the following:

- a commitment from APA to negotiate in good faith with parties seeking connection to the SWQP as to the terms on which connection will be provided subject to the satisfaction of two minimum preconditions:

- agreement between the access seeker and APA as to the location of the connection. APA will only withhold agreement on the basis of technical, operational or safety considerations; and
- the access seeker will pay APA for the cost of the connection;
- a negotiation process based on the negotiation provisions contained in Part 11 of the National Gas Laws;
- provision for an independent arbitrator; and
- an arbitration process based on the dispute resolution process for Covered Pipelines as contained in Chapter 6 of the National Gas Law and Part 12 of the National Gas Rules.

Questions for market participants

1. Whether you consider that the new in-principle proposal as described above is necessary; that is, do you consider that without a negotiation/arbitration regime, the acquisition of SWQP by APA is likely to cause a competition concern through making connection to SWQP more difficult or impossible?
2. Whether you consider that the new in-principle proposal as described above would be likely to be sufficient to address competition concerns in relation to the proposed acquisition? Please explain.
3. Does the threat of coverage or potential coverage of SWQP with light or full regulation under the National Gas Law currently provide a sufficient constraint on the terms on which connection to the SWQP and access to services on the SWQP is provided?
4. APA has proposed that the regime be in place for five years. What do you consider would be an appropriate timeframe for the proposed behavioural obligations to remain in place? Please have regard to likely industry changes, possible new entry and the period over which market dynamics are reasonably foreseeable.
5. Do you consider it would be necessary to include the ‘anti-bundling’ provisions as set out in section 109 of the National Gas Rules in any such negotiation/arbitration regime?
6. Are there any specific market issues or dynamics which the ACCC should pay particular attention to in considering a behavioural undertaking related to connections to the SWQP?

Further questions

1. If MAPS is divested as proposed, APA will own:
 - the Victorian Transmission System (**VTS**) comprising the South West Pipeline (**SWP**), the Principal Transmission System (**PTS**) and the Interconnect;

- the Moomba to Sydney Pipeline (**MSP**);
- the Roma to Brisbane Pipeline (**RBP**);
- the Carpentaria Gas Pipeline (**CGP**);
- a 50% interest in the SEA Gas Pipeline (**SEA Gas**);
- the South West Queensland Pipeline (**SWQP**); and
- the Queensland to South Australia/New South Wales Link (**QSN**).

Does APA's ownership of these pipelines raise any competition concerns that have not been previously identified by the ACCC?