



*Public Competition Assessment
3 November 2005*

Quay Cruises Pty Ltd proposed acquisition of assets of Matilda Cruises Pty Limited

Introduction

1. On 27 September 2005, the Australian Competition and Consumer Commission (the ACCC) decided that it would not intervene in the proposed acquisition of the assets of Matilda Cruises Pty Ltd by Quay Cruises Pty Ltd.
2. The ACCC reserved its right to reconsider the proposed acquisition if it became aware that any information upon which it based its view was in any way incorrect or incomplete.

Public Competition Assessments

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
 - a merger is rejected;
 - a merger is subject to enforceable undertakings;
 - the merger parties seek such disclosure; or,
 - a merger is approved but raises important issues that the ACCC considers should be made public.
4. In this case, it is considered that the merger raises important market definition issues that the ACCC considers should be made public.
5. By issuing Public Competition Assessments, the ACCC aims to provide the market with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the market to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change, because of developments.
6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.

7. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or identify the sources of such information. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, maintaining confidentiality will be the ACCC's paramount concern.

The parties

Captain Cook and Quay Cruises

8. Captain Cook Cruises Australasia Ltd (Captain Cook) operates scheduled sightseeing cruises on Sydney Harbour, the Great Barrier Reef, the Murray River and the Fiji Islands.
9. Quay Cruises Pty Ltd (Quay Cruises) is a wholly owned subsidiary of Captain Cook and offers day time, lunch, afternoon and dinner cruises on Sydney Harbour as well as charter services.

Matilda

10. Matilda Cruises Pty Ltd (Matilda) is a wholly owned subsidiary of Amalgamated Holdings Limited (AHL). AHL is a publicly listed Australian company active in the entertainment, hospitality, tourism and leisure industries.
11. Matilda operates scheduled day time, lunch, afternoon and dinner cruises, private charter boats and ferry services on Sydney Harbour. Matilda's assets include a fleet of 11 vessels.

The proposed transaction

12. Following a request for information by the ACCC, Captain Cook and Matilda filed a joint submission with the ACCC on 2 August 2005 in respect of Quay Cruises' proposed acquisition of the assets of Matilda.

Timing

Table One: Indicative timeline	
Date	Event
2 August 2005	Submission received from merger parties.
15 August 2005	Market inquiries commenced.
29 August 2005	Closing date for submissions from interested parties.
27 September 2005	Parties advised of the Merger Review Committee's findings.

Market inquiries

13. The ACCC conducted market inquiries with a range of industry participants and government agencies.

Market definition

14. The key relevant markets for the purpose of analysing the proposed acquisition by Quay Cruises of Matilda assets were:

- the ferry services market;
- the charter services market; and
- the scheduled cruise market;

in Sydney Harbour.

Ferry services market

15. The ACCC considered that limitations in both supply and demand side substitutability were sufficient to support the existence of a separate market for ferry services. For example, the ACCC found that ferries generally have different seating and design arrangements to vessels used for charters and scheduled cruises, and further that significant costs would be incurred by operators seeking to switch services. Further, market inquiries suggested scheduled cruises primarily attracted tourists while chartered cruises are used for various occasions including birthdays, weddings and corporate events.

Charter services market

16. The ACCC found that scheduled cruises operators are likely to be able to switch to operating charter services with minimal, if any, additional investment in response to any exercise of market power by charter service operators. Accordingly, the ACCC considered that the charter services market included scheduled cruises.

Scheduled cruise market

17. In contrast, the ACCC considered that the market for scheduled cruises did not include charter services (see discussion of asymmetric market definition at paragraphs 19 – 21) on the basis of limitations in both supply and demand side substitutability. In particular, the ACCC found that charter service operators would incur significant investments (for example to obtain time slots for regular departures, ticketing outlet space and the commitment of tour operators) in switching to scheduled cruises.
18. On balance, the ACCC did not consider that there existed a narrower scheduled dining cruise market. In particular, the ACCC noted that some vessels are only used for scheduled dining cruises while others are used for both scheduled sightseeing cruises and scheduled dining cruises. Further, information was only available to the ACCC on the wider scheduled cruise market. The ACCC considered that in any case, the adoption of the narrower market definition would be unlikely to change its decision.

Asymmetric market definition

19. The market definitions adopted above for the charter services market and scheduled cruise market are an example of asymmetric market definition.
20. As indicated above, the charter cruise market includes scheduled cruise operators. Accordingly, for the purpose of analysing Quay Cruises' acquisition of Matilda's charter services, the market was defined to include scheduled cruises. However, the scheduled cruise market would not include chartered cruise operators. Consequently, for the purposes of analysing Quay Cruises' acquisition of Matilda's scheduled cruise business, the market was limited to scheduled cruise operators.
21. While such asymmetric market definition is not uncommon, its emergence in a single acquisition such as this highlights the ACCC's purposive approach to market definition and emphasizes that market definition cannot be simply inferred from previous matters.

Competition analysis

Ferry services market

22. Pre-acquisition, Quay Cruises did not operate ferry services in Sydney Harbour. The ACCC considered that by acquiring the assets of Matilda, Quay Cruises would effectively be a new entrant in this market. Accordingly, the proposed acquisition would not affect competition in the market for ferry services in Sydney Harbour.

Charter services market

23. The ACCC found there to be a substantial number of competitors in the charter services market post-acquisition, including several operators of larger boats like those to be operated by the merged entity. The ACCC considered that these competitors would provide an effective competitive constraint against the merged entity such that the proposed acquisition would not result in a substantial lessening of competition in the charter services market.

Scheduled cruises market

24. Market inquiries raised concerns about the impact of the proposed merger on the scheduled cruises market. In particular, concerns were expressed that the proposed merger would substantially lessen competition for what were referred to as 'walk-up free and independent travellers'.
25. Market inquiries and information provided by the parties indicate two types of passengers in the scheduled cruise market in Sydney Harbour:
 - Free Independent Travellers (FITs); and
 - tourists holidaying in Australia with organised tour groups.
26. FITs are tourists who purchase tickets on a scheduled cruise independently of their airfare/accommodation package. FITs may be further distinguished into two groups:

(i) walk-up FITs (that is, FITs who book a cruise themselves at the ticketing facility of the relevant operator); and (ii) FITs who book a cruise through a day tour operator, concierge, travel agent or internet host.

27. While the ACCC received conflicting information regarding the proportion of scheduled cruise patrons who are walk-up FITs, it appears that they comprise a minority of patrons overall.
28. The principal concerns raised by market inquiries were barriers to access to wharves and retail ticketing outlets at the main tourist wharves relevant to the walk-up FIT segment of the scheduled cruise market. The main tourist wharves identified as being relevant to the walk-up FIT segment of the scheduled cruise market were Circular Quay Wharf 6 and Darling Harbour Pier 26.

Circular Quay Wharf 6 – wharf access and ticketing

29. NSW Maritime (a NSW government agency) controls access to Wharf 6 at Circular Quay. Specifically, market inquiries raised a concern that (i) Quay Cruises (together with Captain Cook) would seem to control 75 percent of the timeslots on Circular Quay Wharf 6, and that competitors or potential competitors would be unable to obtain additional slots if they wished to start, or increase, services in response to a price rise by the merged company and (ii) the lack of access to permanent ticketing facilities at Circular Quay would further impede new and existing competitors' ability to commence or increase services in response to a price rise.
30. However, market inquiries indicated that time slots are currently available on both sides of Circular Quay Wharf 6. In addition, timeslots were also found to be available at other wharves such as Eastern Pontoon, located within close proximity of Circular Quay Wharf 6, although market inquiries suggested that operating from these wharves was not as commercially attractive as operating from Circular Quay (although at least one significant operator, Vagabond, operates from Eastern Pontoon).
31. The ACCC considered that there was insufficient evidence to support a finding that the lack of access to permanent ticketing facilities at Circular Quay was likely to result in a substantial lessening of competition in the scheduled cruise market given the differing views expressed in market inquiries on the efficacy of different ticketing facility arrangements. There was also uncertainty about the approach of NSW Maritime to the allocation of permanent ticketing facilities at Circular Quay post acquisition.

Darling Harbour Pier 26 – wharf access and ticketing

32. The ACCC found that, prior to the acquisition, scheduled cruise operators seeking access to wharves and ticketing at Darling Harbour Pier 26 were required to negotiate arrangements with a competitor. Post acquisition, scheduled cruise operators seeking access to Pier 26 facilities would still be required to make such arrangements with a competitor. Accordingly, the ACCC considered that the proposed acquisition would not have a significant effect on access to wharves and ticketing at Darling Harbour Pier 26.

Conclusion

33. The ACCC considered that in the event that Quay Cruises reduced the number of its cruises servicing walk-up FITs, or ran vessels at partial capacity in an attempt to increase prices, then it would be commercially feasible for other operators to expand their operations. In addition, it was likely that new entrants would be able to enter the market.
34. In any case, the competition concerns raised in market inquiries only related to a small portion of the scheduled cruise market representing the walk-up FIT segment. Further, at least some of these consumers are likely to consider services offered by Sydney Ferries Corporation to be substitutable for a scheduled cruise.

Conclusion

35. The ACCC considered that the proposed acquisition of the assets of Matilda Cruises by Quay Cruises would not have the effect, or be likely to have the effect of substantially lessening competition in the relevant markets for ferry services, charter services and scheduled cruises in contravention of section 50 of the *Trade Practices Act 1974*.