



17 September 2021

House Standing Committee on Economics
Department of the House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: economics.reps@aph.gov.au

SUBMISSION: Inquiry of the Standing Committee on Economics into the Implications of Common Ownership and Capital Concentration in Australia

BlackRock Investment Management (Australia) Limited ABN 13 006 165 975, Australian Financial Services Licence No. 230523 (**BlackRock**) appreciates the opportunity to contribute to the inquiry on common ownership and capital concentration.

Executive summary

As a fund manager, BlackRock's business is providing investment solutions to institutional and individual clients worldwide. Our clients include superannuation funds, banks, insurance companies, corporations and millions of individuals who are largely saving for long-term goals, such as retirement. Simply put, BlackRock's purpose is to help more and more individuals experience financial well-being. Over half of the assets managed by the global BlackRock group relate to retirement – often with investment time horizons of several decades. This drives our own long-term perspective.

Our business is fundamentally different from other types of financial institutions. As a fiduciary, we invest on behalf of and for the benefit of the interests of our clients. Investments are made according to the terms of an investment management agreement or governing documents of the fund chosen by the client. When acting as a responsible entity or trustee, we have obligations under statute and the common law, including to act in the best interests of clients.

In recent years, the utility of diversified funds in helping individuals, households and institutional investors reach long-term financial goals has raised the profile of the fund managers that provide them. While the industry remains diverse and competitive, its growth has attracted academic study and media commentary.

Since 2015, literature from the field of economics has sought to examine the hypothesis that common ownership by diversified investors may be related to adverse outcomes, such as higher prices in product markets. The study of this theory has primarily focussed on Europe and the United States to date.

However, the initial conclusions of these early papers are undermined by significant limitations subsequently identified, including:

- early studies were based on data drawn from US regulatory filings, which aggregate shareholdings of thousands of diverse clients under a single fund manager's name;
- fund managers fundamentally have no incentive to favour reduced competition in a sector, as this may harm client holdings in other sectors or portfolios;

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- no plausible causal mechanism between common ownership and anti-competitive effects such as increased product prices has been established; and
- Subsequent studies have identified numerous methodological and data flaws that undermine preliminary findings.

More recent developments in the literature seek to address some of these issues, leading to much more nuanced conclusions. For example, a move from studies of single sectors with unique characteristics to cross industry studies has provided new insights, along with substantial developments in methodology and data. These recent studies find differentiated (and opposite) effects by investor type.

Several policy suggestions have been put forward by academics, focusing primarily on limiting the ability of fund managers to diversify within an industry, or their ability to cast votes on management and shareholder proposals on behalf of their clients. These measures would have a highly disruptive impact on the functioning of capital markets and would fundamentally change the investment landscape to the detriment of savers and capital markets. In light of the limitations of the common ownership theory and significant developments in the subsequent debate, policy measures based on preliminary findings would be premature and put the interests of millions of individual investors at risk.

We welcome the opportunity to contribute to the work of the Committee, and to participate in an informed discussion of the common ownership theory, from BlackRock's perspective as a fund manager and fiduciary. Our response covers the role of fund managers in supporting vibrant capital markets, investor stewardship and regulatory considerations, including the tools currently available to regulatory bodies.

Yours faithfully,

Alison Telfer
Managing Director
Head of Global Public Policy, Australasia



BlackRock response to inquiry of the Standing Committee on Economics

Ownership of public companies in Australia

Fund managers help millions of Australians put their capital to work in the economy

46% of Australian adults currently hold investments outside of their primary residence and APRA regulated superannuation, according to ASX's Australian Investor Study 2020.¹ Of those who invest, 74% hold listed investments.²

Mutual funds and similar products offered by fund managers have helped individuals and households to access financial markets and move from owning individual stocks with concentrated risk, to owning shares of funds that provide broad and diversified exposures. As the fund industry has grown, the cost of investing has also decreased. Strategies once available only to large institutional investors have become accessible to individuals investing for the long term.

In particular, the popularity of index investing – a low-cost diversification strategy – among both individual and institutional investors has accentuated this trend. While some of the earliest adopters of index strategies were pensions and corporate defined benefit plans, index investing has become a staple of retail investing since the advent of index mutual funds in the 1970s and exchange-traded funds (**ETFs**) in the 1990s.

In Australia, ETFs are now the most popular investment product among the 18 – 24 years age bracket.³

80% of the value of managed funds in Australia is linked to retirement saving⁴

Australian superannuation funds have achieved among the highest long-term growth rates of pension fund assets in the world. Australian superannuation assets totalled AUD\$3.3 trillion at the end of the June 2021 quarter.⁵ In 2020, the value of superannuation funds in Australia ranked as the fifth largest pool in the world,⁶ and their continued growth is a recognised contributor to the dynamism and depth of Australia's capital markets.⁷ Fund managers, such as BlackRock, facilitate access to both active and index tracking strategies to a broad base of the Australian population, both directly to retail clients, or via superannuation trustee clients. Demographic change and increasing longevity are making saving and investment for retirement increasingly important, to enable individuals to maintain their standard of living in old age.

¹ ASX Australian Investor Study 2020, page 13. See <https://www2.asx.com.au/blog/australian-investor-study>.

² Id.

³ ASX Australian Investor Study 2020, page 50. See <https://www2.asx.com.au/blog/australian-investor-study>

⁴ See <https://www.austrade.gov.au/news/economic-analysis/australias-pension-funds-shine-in-2021-global-rankings>

⁵ APRA releases superannuation statistics for June 2021. See <https://www.apra.gov.au/news-and-publications/apra-releases-superannuation-statistics-for-june-2021>

⁶ See the Willis Towers Watson Global Pensions Asset Study – 2021.

⁷ Ibid. 4

Investments managed by fund managers belong to their clients, the asset owners

Over 75% of investment assets globally are managed not by fund managers, but directly by the asset owners themselves.⁸

Institutional investors use in-house portfolio management teams to do this; individuals hold shares in individual companies outside of funds.

Asset owners are highly diverse and range from individuals, to superannuation funds, to insurers, to banks, to charities and sovereign wealth funds, to name just a few. Each have their own unique set of objectives, constraints and convictions. They can choose whether to manage their investments directly, or through the services of a fund manager like BlackRock.

For example, BlackRock does not operate a superannuation fund and is not a RSE licensee. However, many of our clients are superannuation trustees and we are responsible as the fund manager for investing assets on their behalf.

A global fund manager may manage thousands of separate accounts and funds, with a variety of styles and client mandates. In this context, portfolio managers have a separate fiduciary duty and investment strategy for each separate group of investors' funds and accounts. They are bound to act in each case according to the terms of the mandate described either in the offering document of the fund (such as the fund disclosure document) or in investment management agreements they enter into directly with clients. Different funds and accounts must be managed according to their relevant investment strategies and different portfolio management teams may have responsibility for each fund or account. Accordingly, it should not be assumed that the same asset will be managed by the fund manager in the same way for each client or fund account.

The role of fund managers in supporting vibrant capital markets and facilitating the two-way flow of capital and returns

Competition and fragmentation in the asset or fund management industry

The global asset management industry is highly competitive and relatively fragmented, with the top 10 managers accounting for less than half of total industry assets.⁹ All asset managers combined manage about 35% of global equity on behalf of clients.¹⁰ Together, the three leading asset managers manage about 11% of public company shares for clients.¹¹

BlackRock globally manages around 4%, of listed equity assets on behalf of clients through both index-tracking and actively managed products.¹² These assets ultimately belong to our clients and over half relate to helping people save for their retirement.¹³

⁸ See ViewPoint: Lessons from COVID-19: Market Structure 2020, available at: <https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-lessons-from-covid-19-market-structure-november-2020.pdf>

⁹ See ViewPoint: Asset managers of scale give voice to investors and support the economy, available at: <https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-asset-managers-of-scale-give-voice-to-investors-and-support-the-economy-december-2020.pdf>

¹⁰ See Policy Spotlight: Shareholders are Diverse and Dispersed, 2019, available at: <https://www.blackrock.com/corporate/literature/whitepaper/policy-spotlight-shareholders-aredispersed-and-diverse-april-2019.pdf>

¹¹ Ibid. 9

¹² Id.

¹³ See BlackRock 2020 Annual Report, available at: <https://www.blackrock.com/corporate/literature/annual-report/blackrock-2020-annual-report.pdf>



While index investing has grown quickly in recent years, industry assets in index-tracking mutual and exchange traded funds still account for just 10% of the global market capitalization, or dollar value of the global market.¹⁴

Fund managers deliver value for society and the economy

By investing on behalf of individuals and institutions throughout society, fund managers are intermediaries between sources and uses of capital, helping to provide liquidity to businesses via stocks and bonds, as well as facilitating funding into critical infrastructure and renewables projects. Companies use this capital to grow their businesses, sustain employment, invest in the research and development necessary for the next breakthroughs in products and services and build real assets – from buildings, to warehouses, to manufacturing facilities.

Returns from asset management products help the individuals and households invested in them pursue life goals such as buying a home and saving for retirement. They also benefit a wide range of institutional investors, including the insurers and superannuation funds helping meet the liabilities of retirees or life insurance beneficiaries; corporates needing to cover their payroll expenses and pay suppliers; charities maximizing their capital to fund social, cultural and scientific activities; and schools and universities using their endowments to subsidize educational opportunities for future generations.

By facilitating the two-way flow of investment capital and returns, fund managers play an important role in contributing to personal financial well-being for savers and a more resilient economy that benefits more people.

Asset owners make asset allocation decisions

Regardless of whether asset owners choose to manage their investments themselves or use the products and services of a third-party fund manager, strategic asset allocation decisions are made by asset owners. Drivers for asset allocation decisions include macroeconomic developments and interest rate policy.

Institutional investors do this by determining the asset classes, regions and other constraints of their portfolios, which they may implement themselves, or outsource as a mandate for a fund manager to fulfil.

Individual investors similarly make strategic asset allocation decisions when choosing funds and other investments, by considering the asset classes, geographies and other relevant factors, such as sustainability credentials.

Implementation of these investment decisions can be achieved in various ways, including via an index tracking vehicle that aligns with the chosen asset allocation of the investor. For example, index tracking vehicles provide investors access to sustainable strategies, which were once a niche and expensive category of investments accessible to predominantly institutions. First-generation sustainable indexing strategies were available only to large institutional investors but today ETFs and index pooled funds allow all investors to target a wide range of environmental, social and governance (**ESG**) risks and opportunities.¹⁵

In the [ViewPoint: Index investing supports vibrant capital markets](#), we address the concern of some commentators that index funds in particular could drive investment flows into the asset

¹⁴ World Federation of Exchanges, Bank for International Settlements (BIS) (as of 31 December 2019) and Simfund/Broadridge, McKinsey, Markit (as of 31 December 2019).

¹⁵ See Reshaping Sustainable Investing, 2021, available at: <https://www.ishares.com/us/literature/whitepaper/reshaping-sustainable-investing-en-us.pdf>

class, sector or region of the moment, only to see a rapid decline when sentiment reverses. In practice, investment products are tools for implementing the personal asset allocation decisions that are made by asset owners.

Any limitation on an index funds' ability to track an index, such as by limiting common ownership in an industry, has the potential to reduce the utility of index tracking vehicles and the benefits they provide. As noted above, asset allocation decisions are driven by macroeconomic factors; the financial product or service chosen by the investor to execute the strategy is merely a tool that can support efficient implementation.

In times of market stress, ETFs provided by fund managers help investors manage risk

ETFs provide liquidity in times of market stress and as described in [ViewPoint: Lessons from COVID-19: ETFs as a Source of Stability](#), they proved their resilience in 2020. During the unprecedented market volatility resulting from the COVID-19 pandemic, liquidity in underlying markets deteriorated during the selloff, especially in fixed income. ETFs, however, continued to trade efficiently, playing a leading role in price discovery for investors and banks as they gave transparency to the values at which investors were prepared to exchange risk.

Elevated volumes in ETF trading, both in the aggregate and as a percentage of equity market volumes, demonstrated how investors looked to ETFs to allocate capital, adjust positions and manage risk amidst record market turmoil. Additionally, as bond market liquidity deteriorated, investors increasingly relied on ETFs for fixed income exposure. During this time of market stress, ETFs were shown to more rapidly incorporate information into their pricing when compared to non-listed funds, and ultimately provided real-time transparency into bond market prices when cash bond markets were frozen or difficult to trade.^{16,17}

Different investor types as stewards of investments

Fund managers are minority shareholders

Fund managers play an important role in investment stewardship by advocating for the long-term interests of underlying shareholders. However, even those operating at scale remain minority shareholders and rarely have a decisive role in corporate governance decisions, or outcomes of management or shareholder proposals.

Ownership of publicly traded companies in developed markets is diffuse and the largest independent shareholder typically holds only a single digit-percentage of shares.¹⁸

The voice of fund managers is often secondary to controlling shareholders, where they are present, as well as third-party proxy advisors, who provide recommendations to shareholders to inform their votes on management and shareholder proposals.

In addition, it is not uncommon for institutional investors to reserve the option to personally exercise voting rights under the terms of a mandate with a fund manager. For instance, superannuation trustees are required to publicly disclose their proxy voting policies and a summary of when and how the fund exercised its voting rights at annual general meetings of listed companies for the previous financial year.¹⁹

¹⁶ See The recent distress in corporate bond markets: cues from ETFs, Sirio Aramonte and Fernando Avalos, 14 April 2020, available at: <https://www.bis.org/publ/bisbull06.pdf>

¹⁷ See ViewPoint: Lessons from COVID-19: ETFs as a Source of Stability, available at: <https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-lessons-from-covid-19-etfs-as-a-source-of-stability-july-2020.pdf>

¹⁸ Policy Spotlight: Shareholders are Diverse and Dispersed, 2019. Available at: <https://www.blackrock.com/corporate/literature/whitepaper/policy-spotlight-shareholders-aredispersed-and-diverse-april-2019.pdf>

¹⁹ See section 29QB of the Superannuation Industry (Supervision) Act 1993 and s 2.38(2) of the Superannuation Industry (Supervision) Regulations 1994.



Investment stewardship by fund managers

As a long-term minority shareholder on behalf of our clients, BlackRock undertakes all engagement and voting activities with the goal of advancing our client's economic interests. Our clients— are predominantly long-term investors, which means that we, as stewards, must be focused on building constructive relationships with the companies on our clients' behalf to support their investment goals. To that end, we aim to be the voice of the long-term investor, urging companies to focus on the governance and sustainability risks that can impact their ability to generate long-term financial returns. More than ever, we believe company valuations can be significantly influenced by these risks.

As further described in [ViewPoint: Asset managers of scale give voice to investors and support the economy](#), fund managers typically engage as investment stewards on behalf of their clients, by monitoring corporate governance, engaging with company managers and directors and casting votes on management and shareholder proposals. Evidence shows that companies with sound governance and strong shareholder rights outperform their peers.²⁰ In BlackRock's experience, companies that build strong relationships with their stakeholders are more likely to meet their own strategic objectives, while poor relationships may create adverse impacts that expose a company to legal, regulatory, operational and reputational risks and jeopardise their social license to operate. In addition to addressing workforce needs and expectations, BlackRock asks companies to mitigate adverse impacts to people that could arise from their business practices, exposing them to material risks.

The stewardship practices of fund managers are usually focused on broad issues such as governance standards, reporting transparency, ESG risks, and how the board and management are addressing associated relevant risks at their particular firm.²¹ Fund managers can thereby promote best practices across industries and geographies and contribute to policy and good governance — in addition to promoting these practices with individual companies through engagements. Business strategy decisions, however, remain the responsibility of company board and management.

Most proxy votes are routine

Most management proposals put to shareholder votes are routine, covering matters such as the reappointment of auditors. Few are contentious or attract headlines. Indeed, the outcome of these votes is rarely close enough for any fund manager to cast a deciding vote. In the international context, the vote of a company's largest shareholder could have determined the board of director appointments in fewer than 1% of elections for companies in the Russell 3000, FTSE 350 and MSCI Europe indexes.²²

Proxy advisors such as ISS and Glass Lewis, which make recommendations to shareholders on how to vote, carry considerable influence. Proxy advisors are not shareholders and do not cast votes, but by one estimate the recommendations of these third parties can drive as much as 25% of certain votes.²³ This is typically many times the voting impact of any individual fund

²⁰ See FRC's Review of the UK Stewardship Code, 2018, available at http://alexedmans.com/wp-content/uploads/2015/02/TPC_Stewardship-Code_Thoughts-For-Change.pdf

²¹ Ibid.

²² Index data as of 30/6/2020, voting data covering the period of 1/7/2019 - 30/6/2020. Source: Proxy Insight voting database, FactSet database. Accessed 12/03/2020.

See <https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-asset-managers-of-scale-give-voice-to-investors-and-support-the-economy-december-2020.pdf>

²³ Nadya Malenko and Yao Shen, The Role of Proxy Advisory Firms: Evidence from a Regression-Discontinuity Design, The Review of Financial Studies, 2016, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2526799

manager. The Committee would be aware that a consultation initiated by the Australian Treasury in April 2021 sought to assess the adequacy of the current regulatory regime and develop options to strengthen transparency and accountability in the area of proxy advice in Australia. This consultation paper cites the reforms undertaken in the United States and United Kingdom to increase the transparency of practices of proxy advisers.²⁴

Principled stewardship by fund managers can serve to check the influence of parties with narrower, short term interests

The absence of investment stewardship activity by fund managers and diversified asset owners on behalf of their clients would remove the voice of millions of investors and silence advocates for stronger global efforts regarding good governance. It would also leave unchecked the influence of parties that are less representative of the long-term interests of investors, such as proxy advisors and activist investors.

Neither smaller institutions nor individuals can reasonably be expected to have the capacity to continuously monitor, analyse and engage across multiple jurisdictions given national variations and frictions inherent in the individual governance frameworks of each country. In the absence of stewardship by fund managers, many institutions without well-resourced stewardship teams would likely rely partly or entirely on the recommendations of third-party advisors, further distorting the power and influence of proxy advisors.

Were fund managers absent from stewardship, we believe that actors with narrower interests would step in to take their place. As a result, we believe that the outcome of votes on management and shareholder proposals could shift away from a principled approach based on long-term value creation for shareholders. Activist investors often have shorter-term priorities than fund managers and we would anticipate a much higher degree of activist investor interference based on shorter term objectives.

Considerations for regulators in addressing the common ownership hypothesis

Subsequent studies significantly challenge the basis of the common ownership hypothesis

The common ownership hypothesis received attention in 2015, when an academic study claimed that ‘common ownership’ in the US airline industry had led to increased airline ticket prices between 2001 and 2014.²⁵

The theory is that there could be a link between institutional investors’ minority holdings of more than one company in an industry and decreased competition. It is based on fundamental misconceptions about the role of fund managers as shareholders on behalf of diverse clients with diverse portfolios, objectives and expectations.

Since 2015, many further papers have been written on the topic.²⁶ Early papers by proponents of the theory have received significant challenge within academia, addressing substantive limitations to both the conceptual and empirical basis.

Key assumptions have now been challenged by subsequent studies, which make clear:

(a) Fund managers are not the asset owners – aggregated regulatory filings are an ill-suited data point for common ownership

Fund managers are not themselves asset owners. Many early studies on common ownership were based on data drawn from US regulatory filings, which aggregate shareholdings under the fund manager name. The result is that these 13F filings

²⁴ See Greater transparency of proxy advice – Consultation Paper, April 2021, The Australian Government the Treasury.

²⁵ Azar, José and Schmalz, Martin C. and Tecu, Isabel, Anticompetitive Effects of Common Ownership (May 10, 2018). *Journal of Finance*, 73(4), 2018, Available at SSRN: <https://ssrn.com/abstract=2427345> or <http://dx.doi.org/10.2139/ssrn.2427345>

²⁶ See for example: https://www.ici.org/system/files/attachments/pdf/18_common_ownership_papers.pdf



overstate the true degree of common ownership among the ultimate beneficial owners of the firms. The economic beneficiaries, however, are the diverse clients – who themselves hold diverse portfolios. This distinction is critical for interpreting incentives to engage in anti-competitive conduct.

Even for fund managers, it is very difficult to know the true extent of common ownership among the total portfolios of their clients, of which they may only manage and have visibility of, a portion. For example, suppose a superannuation fund has a stake in fund A and another stake in fund B. If A and B are funds from different fund managers, the manager of A will likely not know about B and may not observe B's holdings.

(b) Fund managers lack an incentive to favour reduced competition

Fund managers fundamentally don't have an incentive to favour reduced competition in a sector, as this may harm client holdings in other sectors or portfolios, e.g. an airline ticket is an input cost as part of the supply chain to almost all sectors. Fund managers are paid fees which are a small fraction of the total assets they manage on behalf of their clients and are incentivised to deliver financial performance – competing against other fund managers on the basis of cost, quality and innovation.

Company managers are unlikely to have any incentive to prioritise the perceived interest of a minority of common shareholders over and above the majority of non-common owners. Further, company managers are unlikely to be aware of the nature of the perceived incentives driving shareholders, given that this would require detailed knowledge of that shareholder's whole portfolio, amongst other things. The compensation packages of corporate senior executives are typically structured to reward outperformance against industry competitors.

For both fund managers and company managers, incentives to prefer softer competition are lacking, while **strong disincentives to anti-competitive or collusive behaviour do exist**, in the form of severe regulatory, reputational and even criminal penalties.

(c) No plausible causal mechanism between common ownership and competitive effects such as increased product prices has been established.

Setting aside the fact that fund managers are, fundamentally, not incentivized to prefer reduced competition, another challenge of the common ownership hypothesis is the lack of a clear and plausible causal mechanism for them to induce such an effect. Several possible mechanisms have been proposed by academics, including the investment stewardship practices of fund managers, executive compensation arrangements and even the failure to actively encourage portfolio firms to compete, however, none of these reflect the practical realities of the asset management business, nor how company managers develop and execute their corporate strategy.

(d) Methodological and data flaws present in early papers have been exposed in subsequent studies.

Issues identified in the airlines study include treatment of different fares, double-counting round-trips and not correcting for ownership changes due to airline bankruptcies. When correcting false assumptions regarding control during bankruptcy

and the financial incentives of fund managers, the results are no longer statistically significant.²⁷

Evolution of the common ownership debate since 2015

Since 2015, the academic literature on common ownership has progressed considerably, with more recent academic contributions raising new themes and calling into question the conceptual and empirical basis of earlier studies. As noted by the Australian Competition and Consumer Commission (**ACCC**) in their submission to the Committee, “Overall, there appears to be no consensus in the research on the effects of common ownership on competition.”²⁸

Recent studies find differentiated (and opposite) effects by investor type.²⁹ It matters, for example, whether the non-common owners are highly dispersed or not, and whether common ownership is being measured on an inter- or intra-industry basis.

Existing regulatory tools

Setting aside the conceptual and empirical limitations of the common ownership hypothesis, we note that fund managers and other regulated entities (such as listed companies) operating in Australia are already subject to obligations that prohibit anti-competitive conduct. This includes requirements to disclose certain acquisitions of interests in listed entities.

As established corporate conduct regulators, both the Australian Securities and Investments Commission (**ASIC**) and the ACCC have access to existing tools to intervene and take action against behaviour that is not undertaken in good faith or seeks to limit competition. In addition, the Foreign Investment Review Board (**FIRB**) has the power to approve or deny applications by foreign persons to acquire interests in certain assets, in the national interest and in pursuance of national security.

Mechanisms under each of the Corporations Act 2001 (Cth) (**Corporations Act**), Competition and Consumer Act 2010 (Cth) (**Competition and Consumer Act**) and the Foreign Acquisitions and Takeovers Act 1975 (Cth) (**Foreign Acquisitions and Takeovers Act**), as administered by each respective regulator, provide comprehensive tools to combat the more nefarious potential conduct that could hypothetically emerge in the context of concentrated common ownership and diminished competition, as summarised below.

- (a) **Corporations Act:** Current mechanisms exist that require public disclosure of holdings in listed entities at or above 5%, regardless of whether these holdings are dispersed across many underlying vehicles managed by the fund manager.³⁰ The public record of these filings provides transparency in relation to ownership concentration in listed entities in Australia.

The takeover prohibition limits certain acquisitions of 20% or more in a listed entity, unless in the context of a takeover bid or scheme of arrangement.³¹

In addition, company directors are required to exercise their powers in good faith and for a proper purpose and in the best interests of the company as a whole.³² Critically, actions

²⁷ For detailed analysis, see BlackRock’s 2019 letter to the US Federal Trade Commission Re: Competition and Consumer Protection in the 21st Century – Hearing #8, available at: <https://www.blackrock.com/corporate/literature/publication/ftc-hearing-8-competition-consumer-protection-21st-century-011419.pdf>

²⁸ Submission of the ACCC to the Committee dated 8 September 2021, Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/Commonownership/Submissions

²⁹ See for example Azar, José and Vives, Xavier, Revisiting the Anticompetitive Effects of Common Ownership (March 15, 2021). IESE Business School Working Paper, Available at SSRN: <https://ssrn.com/abstract=3805047> or <http://dx.doi.org/10.2139/ssrn.3805047>

³⁰ See section 671B Corporations Act.

³¹ See section 606 Corporations Act.

³² See section 181 Corporations Act.



taken in favour of a 5% minority shareholder, against the interests of the more dispersed majority of shareholders, could constitute a breach of statutory duties.

- (b) **Competition and Consumer Act:** The entry into contracts, arrangements, understandings or concerted practices that have the purpose, effect or likely effect of substantially lessening competition in a market are expressly prohibited under the Competition and Consumer Act.³³ The ACCC possesses regulatory tools to pursue and prosecute both fund managers and listed entities that engage in collusive arrangements designed to lessen competition in an industry.
- (c) **Foreign Acquisitions and Takeovers Act:** The foreign investment review board of Treasury possesses extensive powers to approve or prohibit certain transactions in Australia by foreign persons – such as those relating to land or media assets – and requires notification of other actions.³⁴

Policy suggestions intended to address the common ownership hypothesis risk harming the interests of long-term savers and the efficiency of capital markets

Despite the limitations of the original common ownership hypothesis, developments in the literature that present sometimes opposite results and the existing tools available to regulators to address anticompetitive behaviour, as described above, some academic commentators have taken the theory as a foundation to suggest policy measures that would fundamentally harm the interests of long-term savers and capital markets. These include:

- (a) **limiting the voting ability of fund managers**, which would be harmful to the asset owners and directly oppose regulatory efforts to ensure asset owners and fund managers exercise their corporate governance and voting rights. It would also remove important advocates of stronger global efforts around corporate governance and would also likely increase the influence of other voices, like activist investors, potentially placing outsized focus on shorter-term concerns.
- (b) **limiting fund managers to holding stock in one company per sector** or being restricted to a percentage limit in a sector, which would undermine the basic tenets of diversification and risk management.

These suggested measures would have a highly disruptive effect on the functioning of capital markets in channelling capital to companies and eliminate the tremendous benefit to asset owners that diversified funds have brought in the past four decades. In the absence of robust proof of a causal relationship between diversified investment and anti-competitive effects, hearings held by the OECD Corporate Governance Committee (2017) and US Federal Trade Commission (2018) have not endorsed these or other policy conclusions.

As noted above, regulatory tools are already available to address anti-competitive conduct in the Australian market.

Conclusion

Diversified fund managers provide individual and institutional investors with access to markets, products and services that support their financial goals.

The advent of pooled funds and ETFs made low-cost, diversified investing available to millions of savers and investors across the world. Closer to home, fund managers in Australia play a critical role in the delivery of services to superannuation trustees and retail investors, to support the retirement goals

³³ Section 45 Competition and Consumer Act 2021 (Cth).

³⁴ See Parts 2 and 4, Foreign Acquisitions and Takeovers Act 1975 (Cth).

of millions of Australians. Through these funds, fund managers help investors large and small to build savings and financial well-being throughout their lives. Pooled investing through funds also helps fuel the growth of companies, which in turn creates jobs and fosters innovation.

The role that asset management products and services play in bolstering personal financial resilience and connecting capital to companies will play an increasingly important role as countries continue to navigate the effects of the pandemic.

As stewards of investments, fund managers advocate for the interests of clients who invest through their products and services. Despite the significance of this role, fund managers remain minority shareholders that hold single digit portions of listed assets and accordingly do not hold decisive voting power. Further, some institutional clients reserve the voting rights of assets otherwise managed for them by fund managers, which limits the total number of votes the fund manager may ultimately exercise. The diversity of clients and accounts, and the fiduciary duties owed to each investor also requires the separate consideration of voting actions taken across a fund manager's total holdings in the same listed asset.

We submit that the funds management industry in Australia is highly regulated and adheres to a robust legislative regime with access to regulatory tools that can be deployed to address anti-competitive conduct. Any law reform based on an idea still subject to rigorous debate, is in our view, premature and inconsistent with the approach taken overseas. Further, this would abruptly impose direct costs and restrictions on Australians and their savings for an unproven consumer or market outcome.