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Competition Taskforce
Treasury
Langton Cres
Parkes ACT 2600

By email: CompetitionTaskforce@treasury.gov.au

13 August 2024

Dear Competition Taskforce

Re: Reforming mergers and acquisitions – exposure draft

The Council of Small Business Organisations Australia (**COSBOA**) welcomes the *Treasury Laws Amendment Bill 2024: Acquisitions*. There are approximately 2.5 million small businesses in Australia which represent approximately 97.3% of all businesses in the country. According to data from William Buck, in 2023 approximately 80 per cent of mergers and acquisitions in Australia were within the \$0-\$100 million range.¹ Thirty per cent of transactions were valued under \$10 million. This data highlights the prevalence of small and medium sized enterprise (SME) transactions and the importance of a merger regime which can effectively capture a range of value transactions.

COSBOA is particularly supportive of the measures in the Bill which seek to address long held concerns across the small business community regarding the effective analysis of serial acquisitions and roll-up strategies. COSBOA welcomes the Bill's emphasis on the importance of considering the competitive structure of markets in the context of overall assessment of the effects of the acquisitions. COSBOA believes that the ability to conduct an effective review of serial acquisitions will be bolstered by granting the ACCC powers to consider all mergers within the previous three years by the acquirer or the target which will be aggregated for the purposes of assessing whether a merger meets the notification thresholds, irrespective of whether those mergers were themselves individually notifiable. Further, we welcome the additional amendment of the definition of a "substantial lessening of competition" in section 4G of the *Competition and Consumer Act 2010* to clarify it includes "creating, strengthening or entrenching a substantial degree of power in a particular market or any market". This clarification will be helpful in analysing serial or smaller acquisitions which have previously perhaps gone under the radar or have not individually raised red flags despite increasing the market power of larger businesses at the expense of their smaller counterparts.

COSBOA considers that the publication of ACCC determinations on a public register will increase transparency around decision making. Publication of information and documents provided as part of the process will facilitate greater awareness of factors around effective market analysis and encourage greater participation by the small business community in the merger review process. COSBOA's welcomes these changes to promote a more level playing field for small businesses across the economy.

¹ https://williambuck.com/wp-content/uploads/2024/02/Dealmaking-Insights-Report_William-Buck-2024.pdf

COSBOA understands that the Bill will allow notification thresholds to be set in regulation using metrics such as turnover, transaction value, and market concentration. We look forward to consulting with Treasury in developing suitable notification thresholds and consider it imperative that the thresholds are set in such a way that the changes put forward to date can be affected in a meaningful way to create a more level competitive environment for all businesses in the economy.

COSBOA also strongly advocates for a small business fee exemption as previously referred to in the Government's Response released in April 2024.

Kind regards



Luke Achterstraat
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COSBOA