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Senate Standing Committees on Economics
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24 October 2024

Dear Committee Secretary

Re: Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024

Introduction

The Council of Small Business Organisations Australia (**COSBOA**) welcomes the Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024 (**the Bill**). Small businesses account for approximately one third of Australia's GDP and employ more than 5 million Australians.

COSBOA is supportive of the Bill which seeks to overhaul the existing merger framework and replace it with a mandatory and suspensory administrative system for acquisitions. For small businesses to successful co-exist with larger businesses, national competition laws must provide appropriate mechanisms to limit both anti-competitive structures and behaviours. Greater regulation of serial acquisitions, for example, will assist in this aim.

Thresholds

The Explanatory Memorandum to the Bill notes that the Minister has the power to determine by legislative instrument the circumstances in which an acquisition must be notified based on specified thresholds.¹ COSBOA understands that the Government² is proposing the following key notification thresholds:

- **Economy-wide monetary threshold:** where the Australian turnover of the combined businesses is above \$200 million, and either the business or assets being acquired has a turnover above \$50 million or global transaction value above \$250 million.
- **Very large business buying smaller business threshold:** where the acquirer group's Australian turnover is at least \$500 million and the turnover for each of at least two of the merger parties is \$10 million.
- **3-year serial acquisition threshold for**
 - **medium to large sized mergers:** where the combined Australian turnover of merger parties is at least \$200 million and the cumulative turnover from acquisitions in the same or substitutable goods or services over 3-year period is at least \$50 million.
 - **very larger acquirers:** where the acquirer group's Australian turnover is at least \$500 million and the cumulative turnover from acquisitions in the same or substitutable goods or services over 3-year period is at least \$10 million.

¹ Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024, section 51ABP.

² Merger reform for a more competitive economy: Government response to consultation, p 2.

We understand the Government intends to exclude acquisitions below \$2 million. However, COSBOA submits that such an exclusion may not be appropriate across all industries.

As mentioned in our previous consultation with Treasury, 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.³ 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.

While the Government response notes that the thresholds to capture serial acquisitions would ensure that the aggregation of market share through small acquisitions would need to be captured. COSBOA is concerned that there may be small and local retailers acquired that may unintentionally fall within the cracks of the proposed threshold and be subject to creeping acquisitions not required to be notified.

Ministerial Determinations made in consultation with key stakeholders are important to ensure that any anti-competitive effects of creeping acquisitions or smaller acquisitions of small businesses impacting local markets are properly analysed. A review of the proposed notification thresholds after 12 months is also important to ensure the thresholds are capturing all potentially anti-competitive mergers.

COSBOA welcomes any further consultation the Government will carry out in developing these Determinations and other guidelines the ACCC may also be creating.

Substantial Lessening of Competition

COSBOA welcomes the 'substantial lessening of competition' test and the additional consideration of relevant markets in which the parties compete or operate in. It is also important that the ACCC considers economic factors when assessing risk to competition.

Public Benefit Application

COSBOA supports the policy intention behind a notifying party to an acquisition making a public benefit application. It is important that in considering a public benefit application, the ACCC properly considers the small business impact. It would be useful to include a small business impact section on the application form and in the public benefit guidelines that will be determined by the Minister.

Conclusion

COSBOA looks forward to working with the ACCC and Government on the further development of the notification thresholds, guidelines and appreciates the inclusion of a small business fee exemption.

COSBOA also welcomes any further consultation the Committee may choose to undertake.

Kind regards,



Luke Achterstraat
Chief Executive Officer
COSBOA

³ https://williambuck.com/wp-content/uploads/2024/02/Dealmaking-Insights-Report_William-Buck-2024.pdf

