



02 September 2024

Ms Joanna Abhayaratna
Executive Director
Office of Impact Analysis
Department of the Prime Minister and Cabinet
1 National Circuit
BARTON ACT 2600

Email: Helpdesk-OIA@pmc.gov.au

Dear Ms Abhayaratna

Impact Analysis – Merger Reform – Second Pass Final Assessment

I am writing in relation to the attached Impact Analysis (IA) prepared for Merger Reform.

I am satisfied that the IA addresses the points raised by the Office of Impact Analysis (OIA) in your letter of 27 June 2024. Specifically, the IA now expands on identified case studies to evidence the magnitude of the problem and costs of inaction, provides added measurable targets and their metrics (noting data limitations), describes the constraints/barriers to achieving the goal, and outlines the implementation risks.

In relation to Question 1 (*What is the policy problem you are trying to solve*), case study boxes have been included to provide further details of the identified matter to draw out the implications of the case examples, noting limitations with the available data to undertake further quantitative analysis.

In relation to Question 2 (*What is the objective of Government action*), measurable statutory timeline targets have been added, noting development of the new database to track the impact of mergers and acquisitions will inform further implementation and evaluation planning. Further details on constraints and barriers to achieving the goals have also been included.

In relation to Question 4 (*What is the likely net benefit of each option*), further caveats have been added in the footnote to explain the constraints (differing population size, consumer spending, market structure and concentration, regulatory approach) in providing equivalent Australian estimates of overseas estimation of the benefits from preventing anti-competitive mergers and acquisitions.

In relation to consultation conducted to confirm the accuracy/reasonableness of the regulatory compliance cost estimates, Treasury has undertaken targeted consultation with competition practitioners who have private practice experience and insight into the costs incurred by merger parties. Further, the estimates are informed by existing analysis of publicly available data (such as federal court costs incurred by merger parties), confidential cost data

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supplied by ACCC, benchmark analysis against the UK and the Foreign Investment Review Board's regulatory burden of the different assessment stages (taking account of the difference between mandatory and voluntary systems, and the focus of the reform options on upfront information requirements), and the professional knowledge of Competition Taskforce staff with extensive experience in legal practice.

In relation to Question 6 (*What is the best option from those you have considered and how will it be implemented*), potential implementation risks/mitigating strategies have been added regarding the setting of appropriate thresholds (to avoid over-capture or under-capture), implementation of the new system (including new policies, procedures and guidance), and required capabilities, culture, practice and resourcing for the ACCC.

The regulatory burden to business, community organisations or individuals is quantified using the Australian Government's *Regulatory Burden Measurement* framework and is provided below.

Regulatory burden estimate table

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$11	NIL	NIL	\$11

Accordingly, I am satisfied that the IA is now consistent with the six principles for Australian Government policy makers as specified in the *Australian Government Guide to Policy Impact Analysis*.

I submit the IA to the Office of Impact Analysis for formal final assessment.

Yours sincerely



Brenton Philp
Deputy Secretary
The Treasury