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By email:

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RE: Reforming mergers and acquisitions – exposure draft

MGA Independent Businesses Australia welcomes the opportunity to make a submission to the Competition Taskforce on the merger reform exposure draft.

We would welcome the opportunity to provide the Competition Taskforce with further information based on our submission if it would be of assistance. The relevant contact is David Inall who can be reached at david.inall@mgaiba.org.au.

MGA Independent Businesses Australia (MGAIBA) has been representing independent grocers since 1898. MGAIBA is a national industry association representing thousands of independent grocery and liquor outlets in all States and Territories of Australia. These businesses range from small to large and account for approximately \$16 billion in National retail sales within the supermarket and liquor sectors, collectively employing over 120,000 people. MGAIBA members trade under various respected banners, including but not limited to IGA, FoodWorks, Ritchies, Supa IGA, IGA Express, SPAR, Cellarbrations, and The Bottle-O.

Competition reform is needed to address systemic problems in the supermarkets and grocery sector

The supermarkets and grocery sector is one of Australia's most concentrated sectors, with the two largest firms controlling two-thirds of the market. Rising supermarket concentration has been driven by persistent and increasing merger activity – the rate of retail merger activity has increased seven-fold since 1990.¹

The dominance of the two largest supermarket chains has driven up grocery prices. Mark-ups in the supermarket and grocery sector have increased by 1 percentage point from 2003 to 2015.² Higher mark-ups have resulted in higher grocery prices. Food and non-alcoholic beverage prices have increased by 18% from January 2021 to June 2024. This rate of price increase is higher than every other consumer category apart from transport, housing and insurance.³

Current merger settings have not been adequate to address competition problems in the food and grocery sector. Reform is needed to address serial acquisitions, ensure that acquisitions by dominant incumbents are notified to the ACCC, and ensure that the merger test adequately captures acquisitions that entrench concentrated market power.

¹ Australian Bureau of Statistics (2024) *Counts of Australian Businesses*; Refinitiv (2023); Andrews, Triggs and Dwyer (2023) *The state of competition in Australia*.
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² Hambur, J. and La Cava, G. (2018) *Business concentration and markups in the retail trade sector*.

³ Australian Bureau of Statistics (2024) *Monthly Consumer Price Index indicator*.

The exposure draft is a step in the right direction in addressing competition issues in the food and grocery sector

It is encouraging to see the exposure draft introduce several elements that seek to address the shortcomings of the existing merger control regime. These include:

- **Mandatory notification:** The exposure draft includes a requirement for certain acquisitions to be notified to the ACCC for review before completion. This is necessary because the current system of informal merger review means that many potentially problematic mergers may not be considered by the ACCC. While there have been 1,000 to 1,500 mergers per year in Australia over the last decade, the ACCC has considered only about 330 acquisitions per year.⁴
- **Creeping acquisitions:** The exposure draft has inserted provisions to ensure that the combined effect of all acquisitions by the merger parties in the past three years are aggregated in determining whether the notification threshold is met. This should assist in addressing 'creeping acquisitions' – the large number of small acquisitions that dominant supermarket and grocery incumbents often make to solidify market power.
- **Definition of 'substantial lessening of competition':** The expansion of the definition of 'substantial lessening of competition' to include explicit reference to 'creating, strengthening or entrenching a substantial degree of power in the market'. This should ensure that decision-makers give due consideration to market structure, given strong empirical evidence that links concentrated market structures to weak competition in a market.

It is important that the final merger control framework is designed in a way that addresses the shortcomings of the existing merger control regime.

We understand that some aspects of the new merger control framework are still under development. It is important that these elements are designed thoughtfully to revitalise competition across the Australian economy, including in the supermarket and grocery sector. These aspects include:

- **Notification threshold:** Mandatory notification should apply to all dominant incumbents to ensure that their acquisitions of small targets are not 'slipping through the cracks'. In the supermarket and grocery sector, mandatory notification should apply where the merger parties have a combined market share (locally or nationally) over a defined threshold (e.g., 40%).
- **Merger principles:** We understand that the Section 50(3) merger principles are proposed to be replaced by new 'merger principles'.⁵ It is important that these merger principles direct decision-makers to consider aspects of the merger that are most indicative of its potential impact on competition in the market. In the supermarket and grocery sector, these aspects include market concentration, structural and strategic barriers to entry, and the nature of data and technology assets acquired through the merger.

There is a large national dividend if we get this new framework for mergers right – it will revitalise competition across the economy, including in the supermarket and grocery sector where it will place downward pressure on grocery prices.

Please don't hesitate to get in touch if we can provide further information.

Regards,



David Inall
Chief Executive Officer

⁴ Leigh, A. (2024) *Game changer: harnessing microdata for a fairer competition landscape*.

⁵ Treasury (2024) *Merger reform: A faster, stronger and simpler system for a more competitive economy*.