

Competition Review Taskforce
Merger reform consultation on draft legislation

16 August 2024

By email: competitiontaskforce@treasury.gov.au

Submission seeking renumbering of the new merger control provisions

Dear Competition Review Taskforce,

I make this short submission in my personal capacity from the perspective of a legal practitioner advising clients in complying with and enforcing Australia's merger control regime. I do not wish to add to the debate on the merits of the reforms which will be canvassed in other submissions. This submission simply, and respectfully, requests that the legislative amendments are renumbered to promote simplicity, accessibility and clarity.

A core objective of any statutory prohibition, especially a statutory prohibition with an economy wide application, is to strive for simplicity, accessibility, clarity and precision.

The draft legislation adopts an unusual numbering convention with the merger control regime (excluding remedies) now traversing section 51ABB to section 51ABZZC. The fact that there is proposed to be a section 51ABZZC suggests that there may be scope for a simpler numbering regime.

The core provision in which the ACCC may clear, clear with conditions, or block a merger by applying the SLC test appears in section 51ABW instead of section 50 under the current regime. Relevant matters to be applied in the SLC assessment are now in section 51ABX, instead of section 50(3). Further examples include that the ACCC's obligation to publish the 'notice of competition concerns' is in section 51ABZE, the ACCC's obligation to make a substantial public benefit determination is now in section 51ABZQ, key information gathering powers are at section 51ABZS, and time extensions are at section 51ABZT.

In light of the objective to promote simplicity, clarity and accessibility for practitioners, enforcers and businesses, I respectfully request that Treasury please consider seeking to simplify the numbering as there may be scope for improvement.

I reiterate that the views expressed in this submission are made in my personal capacity and do not necessarily reflect the views of my employer, past employers or clients.

Please do not hesitate to contact me to discuss any aspect of this submission.

Joe Malcolm, [REDACTED]