

Submission to Competition Taskforce on Exposure Draft

1 Overview

Metcash Limited (**Metcash**) welcomes the opportunity to comment on the draft Treasury Laws Amendment Bill 2024: Acquisitions (**Exposure Draft**).

As noted in its comments on the Merger Reform Consultation Paper, a key concern of Metcash is the extent to which amended merger review provisions within the *Competition and Consumer Act 2010* (Cth) (**CCA**) might contribute to the continued vibrancy of independent retailers, to the benefit of consumers and the overall competitive process. As the Taskforce is aware, Metcash has long standing concerns regarding “creeping acquisitions” and the ability of the current legal framework to address the broader impact of a series of local retail transactions. Metcash’s concerns relate both to the acquisition of independent retailers by large vertically integrated retailers but also the acquisition of land and interests in land by such retailers including for future development.

Metcash’s limited submissions are made with this overarching concern in mind.

2 Notification requirements

Metcash understands that there will be further consultation on the notification thresholds and that, the Exposure Draft does not specify any proposed thresholds.

Nevertheless, Metcash makes certain comments in respect of potential notification requirements as described in proposed sections 51ABG and 51ABH. Metcash appreciates that there will potentially be differences of opinion as to appropriate thresholds from the perspective of acquisition value and/or the parties’ turnover. There are clear administrative and financial burdens in a compulsory notification process. Setting the notification thresholds too low to capture transactions which are unlikely to raise competition law concerns is inefficient and should be avoided.

Metcash considers that an appropriate way to avoid this concern is to ensure that there is flexibility in the notification thresholds/criteria which would allow for specific criteria to apply to specific situations. Metcash considers, in this regard, that all Australian transactions by vertically integrated retailers with market power involving the acquisition of independent retailers, shopping centres and/or land for the purposes of development, should be subject to a notification requirement. Amending section 51ABG or 51ABH such that the only requirements for notification would be turnover or transaction value could mean that such transactions are not caught by the notification requirements or alternatively, that the requirements are set too low in terms of the size of the deal or turnover of the Target such that they may be broadly over inclusive.

Metcash is not suggesting that specific notification requirements should apply to any transaction within hardware, liquor and broader grocery markets. Such a requirement would likely place an unwarranted financial and administrative burden on smaller transactions by parties in relevant business segments who lack market power.

3 Serial acquisitions

Metcash, in general, supports the proposed provisions relating to serial acquisitions. It notes, in particular, the proposed language in section 51ABZ which refers to the combined effect of acquisitions “that involve the same industry as the current acquisition”. Metcash, in the context of its concerns regarding creeping acquisitions, supports the use of the term “industry” as compared to use of an alternative term such as “market”. Metcash seeks to avoid circumstances where a large vertically integrated retailer could assert that the cumulative effect of transactions could not be considered by reason, for example, that serial acquisitions take place within adjacent, but arguably, separate local retail markets or that one transaction involves the acquisition of an interest in land and the next transaction involves the acquisition of a retailer or shopping centre.

4 Substantial lessening of competition test

Metcash notes the proposed changes to section 4G of the CCA such that a substantial lessening of competition would include reference to creating, strengthening or entrenching a substantial degree of market power.

Metcash supports this proposed amendment as it may, in combination with the proposed serial acquisition provisions, provide a basis for the ACCC to consider the broader competitive effects of vertically integrated retailer acquisitions outside of particular local market areas. Metcash would not support any submissions which assert that this proposed amendment should not be adopted by reason of redundancy or that any qualifying language is required (eg, [substantially] strengthening or entrenching substantial market power). Such changes would materially dilute the prospect of the regime addressing creeping acquisition concerns.