



12th August 2024

Competition Taskforce
Treasury
Langton Crescent
PARKES ACT 2600

Correspondence via email: CompetitionTaskforce@treasury.gov.au

RE: Exposure Draft: Treasury Laws Amendment Bill 2024: Acquisitions

Dear Competition Taskforce,

Introduction

The National Farmers' Federation (NFF) welcomes the opportunity to make a submission to the consultation on *Exposure Draft: Treasury Laws Amendment Bill 2024: Acquisitions*. The NFF has stated for a long time that mergers and acquisition reform was central to improving the competitive landscape. The NFF to date has been publicly supportive and has welcomed the Government's progress in this reform process.

It is vital that these reforms strike the balance whereby mergers are appropriately scrutinised as to protect Australian producers from loss of competition in supply chains, whilst concurrently not cooling investment, corporate activity and associated liquidity in the Australian economy.

Background

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

Ensuring a competitive supply chain is crucial to the success of Australian agriculture. Competitive markets are a fundamental driver of industry efficiency, productivity, innovation, investment and international competitiveness.

Australian agriculture is one of the most competitive agricultural industries in the world, in part due to macroeconomic reforms of the 1980's and 1990's. As a result of these reforms Australian farmers have become more efficient, productive, sustainable, and internationally competitive. Although, Australian agriculture's



ability to continue these gains is dampened by increasing market concentration and consolidation along the agricultural supply chain.

Australian agriculture is generally made up of many small to medium businesses based in regional and remote areas. These individual businesses are generally situated between heavily concentrated input and output markets that influence the overall market conditions available to businesses. As a result of these factors, having sensible competitive settings for mergers and acquisitions is critical for positive outcomes for both producers and consumers.

Exposure Draft: Treasury Laws Amendment Bill 2024: Acquisitions

The NFF welcomes the release of the Exposure Draft: Treasury Laws Amendment Bill 2024: Acquisitions which builds on the Government's announcement of the reforms on 10 April 2024.

The reforms are a step in the right direction in balancing the need to have a review process that does not deter investment in the Australian economy, but similarly ensures a strong and appropriate framework is in place to protect Australian producers and consumers.

The NFF's competition policy released in 2020 outlines a series of reform recommendations with respect to merger and acquisitions processes requiring:

- Formal notification of mergers to ACCC above a certain financial threshold and mergers need to wait for approval by ACCC before the transaction goes ahead;
- A greater focus on the competition implications of proposed mergers including the structural conditions that are changed by the acquisition, significance of the assets being acquired to that market etc;
- Change the evidentiary burden of proof to challenge a merger by changing provisions to state lessening of competition is 'likely' as opposed to 'on the balance of probabilities';
- Where one of the merger parties has substantial market power, an acquisition will be deemed to substantially lessen competition where it entrenches, materially increases or materially extends that market power;
- The competitive effects of other agreements entered into by merger parties can be considered together with the merger as part of the substantial lessening of competition assessment (look at more than just the merger);
- A public consultations process whenever there is a proposed merger within a concentrated market; and



- Require an analysis of company ownership as part of reviews into proposed mergers and acquisitions.

To this end, the NFF supports these key aims of the Bill:

- Introduction of mandatory notifications of mergers above a certain threshold, recognising that the threshold itself will be subject to consultation later this year;
- That acquisitions are put into effect unless the commission believes that they would have, or are likely to have, the effect of substantially lessening competition;
- Improved processes to ensure previous acquisitions in the years prior by relevant parties are adequately assessed are part of the notification assessment.
- Increasing the focus on the market power of the parties to the acquisition and clarify that even an incremental change in market power, may still amount to a substantial lessening of competition; and
- That the Australian Competition and Consumer Commission (ACCC) has the capacity to prevent acquisitions that have an anti-competitive effect on Australians irrespective of the location of the parties to the acquisition.

In addition, the NFF firmly believes that the ACCC needs to be appropriately resourced to be effective in its role in Australia's competition landscape. Ensuring that any change in the role of the ACCC is appropriately accounted for with resourcing.

The NFF looks forward to continuing to work with the Government in these important reforms. Should you seek any further information, please do not hesitate to contact Mr. Guy Nicol, Policy Officer, Economics via gnicol@nff.org.au.

Yours sincerely,

Tony Mahar
Chief Executive Officer