REVELOP

20 September 2024

Competition Taskforce
The Treasury
Langton Crescent
Parkes ACT 2600

By email: **competitiontaskforce@treasury.gov.au**

RE: Submission of Revelop to the Australian Treasury regarding *Merger Reform Paper (Competition Review) 10 April 2024)*

Revelop respectfully submits its views opposing the Australian Competition and Consumer Commission's (ACCC) proposal for merger reform announced by the Australian government on April 10 2024. Revelop is a property development company specialising in commercial properties and retail developments. Revelop own, develop, operate and manage a property portfolio across three states in Australia. The Australian government's approach to mergers is directly relevant to us, and we urge the careful consideration of our views.

Delays in transactions

The merger reforms are set to introduce a mandatory notification and suspensory system that could significantly delay property transactions. Under these reforms, companies must notify the ACCC of any merger or acquisition that meets specific thresholds, and the deal cannot proceed until the ACCC completes its review and grants approval. This review process includes a two-phase structure, with Phase 1 lasting up to 30 days and, if required, Phase 2 extending for an additional 90 days for more complex cases. For landlords involved in property acquisitions or mergers, these delays can complicate real estate deals, especially when timing is critical for closing transactions, securing financing, or finalising contracts with tenants. The uncertainty surrounding when or if a deal will be approved creates difficulties in aligning with tenants' leasing agreements and long-term property management plans.

The reforms will also complicate dealings with lenders and potential buyers, both of whom typically require certainty regarding transaction timelines. Lenders may hesitate to commit to financing deals that are pending regulatory approval, especially if the review process drags out or results in conditions being imposed that could change the transaction's structure. Similarly, buyers may become wary of engaging in prolonged negotiations without knowing whether the deal will be approved or face additional hurdles. This uncertainty could lead to missed opportunities in fast-moving property markets, where timing is essential for securing favorable deals. In the property market, some transactions require quick closings to capitalise on market conditions. For instance, some acquisitions may be closed within as little as two weeks or even completed off-market, where properties are purchased before they are publicly listed. The new mandatory notification and ACCC review system could obstruct such deals, potentially affecting their ability to reinvest in properties or expand portfolios. The cumulative effect of these delays could have broader economic impacts, particularly in competitive property sectors where the regulatory process may create blocks for ongoing deals.

Uncertainty

The merger reforms significantly expand the powers of the ACCC and introduce new levels of uncertainty for businesses and industries. One of the primary concerns with these reforms is the lack of clarity around key elements of the new system, which could result in unpredictable outcomes. For instance, there is no clear certainty on how timeframes will be achieved under the new two-phase review process. While Phase 1 is expected to take up to 30 days and Phase 2 may extend to 90 days, the complexity of certain transactions and the ACCC's expanded powers could mean that these timeframes are frequently exceeded, creating prolonged delays for businesses waiting for regulatory approval. The uncertainty around how long the review process will take makes it difficult for companies to plan transactions and meet financial commitments with tenants, lenders, or other stakeholders.

The new system also leaves ambiguity around market concentration thresholds, which further complicates the landscape for businesses, particularly in property and real estate. The ACCC will now assess cumulative acquisitions over a three-year period, but there is no defined threshold that clearly explains at what point these acquisitions will trigger additional scrutiny or rejection. Without firm guidelines, developers and investors will face unpredictable outcomes, unsure whether their transactions will be blocked or subject to conditions that could fundamentally alter their business plans. The lack of certainty creates hesitation among businesses to pursue growth opportunities, as they cannot accurately assess the risk of ACCC intervention. For the real estate market, this could discourage investment, delay development, and ultimately lead to slower economic growth in key regions. The unpredictability in the expanded powers of the ACCC may undermine business confidence and suppress long-term growth.

Unnecessary concerns in smaller markets

The merger reforms could create unnecessary concerns in smaller markets, where many real estate transactions are benign and pose no real threat to competition. In these smaller markets, property acquisitions are often made to expand local portfolios, facilitate development, or provide essential infrastructure. However, under the new rules, even these benign transactions would be subject to the ACCC's mandatory notification and suspensory review process, regardless of the lack of competitive risk. This heightened scrutiny could create roadblocks for smaller developers or property groups looking to expand, as they might face unnecessary delays and compliance costs. The absence of flexible guidelines for smaller markets could mean that acquisitions with no potential for anti-competitive harm are treated the same as those involving large, dominant market players.

Furthermore, the ACCC's expanded powers mean that property acquisitions in smaller markets might be unfairly blocked or delayed, even when there is no risk to local competition. For instance, a landlord or developer purchasing a few commercial or residential properties in a small regional area may not significantly alter market dynamics. However, the new reforms introduce broad thresholds and assessments of cumulative acquisitions over the past three years, which could flag even minor transactions for closer scrutiny. This blanket approach does not account for smaller or regional markets, where competition is often limited by geographic and demographic factors rather than market concentration. By blocking or delaying such benign transactions, the ACCC risks suppressing local development, slowing infrastructure growth, and hampering economic progress in areas that rely on continued property investment. The inability to move forward with acquisitions may leave local communities with fewer housing options, stalled commercial development, and less overall economic activity.

Discourage investment and growth opportunities

The merger reforms are likely to discourage investment and growth opportunities, particularly within the property development sector. The mandatory notification and suspensory system under the new regime, along with the ACCC's power to review cumulative acquisitions over a three-year period, introduces significant delays and uncertainty. For developers, the potential for drawn-out reviews (which can last up to 90 days in more complex cases) creates a risk of missed market opportunities, especially in fast-paced urban developments. Investors may be reluctant to commit capital if the timing of projects is unpredictable, limiting the ability of developers to secure funding or negotiate favourable terms.

This uncertainty and delay in obtaining approvals will have a broader effect on real estate development, particularly in cases where land is allocated for large-scale projects. The inability to move forward quickly with acquisitions or mergers could deter developers from pursuing opportunities, leading to portions of land remaining undeveloped or underutilized. In regions where infrastructure development is critical, these delays could hinder growth. Moreover, local communities that depend on these developments for economic activity, job creation, and housing supply could suffer. Developers may shift focus to less regulated markets or scale back their operations, reducing the availability of new commercial spaces. Ultimately, the reforms may lead to inactivity in real estate markets, leaving parcels of land unused and opportunities for urban regeneration unfulfilled. This unintended consequence could further strain housing affordability and economic vibrancy in key regions.

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