



Australian Information Industry Association

Submission on

Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024

25 October 2024



Introduction

The Australian Information Industry Association (AIIA) appreciates the opportunity to provide feedback on the Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024. We are supportive of initiatives that increase competition, as they are pivotal for fostering product innovation and delivering value to consumers and businesses alike.

We thank the Department for considering our prior recommendations, particularly in providing greater certainty by binding the Australian Competition and Consumer Commission (ACCC) to prescribed timeframes, incorporating a net public benefit test, and allowing for a reasonable transition period. These measures will contribute significantly to a more predictable and transparent regulatory environment.

While we acknowledge the Treasury's efforts to focus on mergers and acquisitions through the introduction of three key monetary thresholds, we believe that a mandated regular consultation process with the industry would be beneficial. Such a process would ensure that these thresholds are evidence-based and fit for purpose, promoting competition and enabling efficient reviews across various sectors—including the tech industry with its unique merger and acquisition characteristics.

Concerns with the Proposed Amendments:

Monetary Threshold

- **Practical Implications:** When on the face of it, the \$500 million Australian turnover threshold may appear high, companies in Australia with substantial operations may be required to file notifications for a large number of mergers, many of which may not pose competitive concerns. Similarly, while the inclusion of a \$10 million Australian turnover threshold for the acquired company provides some limitation, it may not sufficiently reduce the regulatory burden on businesses engaging in routine mergers and acquisitions.
- **Threshold Appropriateness:** We recommend re-evaluating this figure to balance regulatory oversight with business efficiency.

Market Concentration Threshold

- **Definition Challenges:** Determining market shares necessitates defining the relevant market, often requiring an in-depth investigation. This complexity can introduce significant uncertainty into the filing process.
- **International Alignment:** Using market concentration as a filing threshold could make Australia an outlier compared to major antitrust regimes globally, potentially affecting international business relations.
- **Threshold Specificity:** While the proposal does not currently specify a 25% threshold—indicating that it will be determined later—this lack of specificity adds further uncertainty. We believe a combined market share threshold should be carefully considered, as a low threshold may not necessarily indicate harm to competition. Therefore, we do not support the inclusion of market concentration thresholds.



"Substantial Lessening of Competition" Definition

- **Clarity and Implementation:** The Exposure Draft indicates that a substantial lessening of competition may involve creating, strengthening, or entrenching a substantial degree of power in the market. However, there is a lack of clarity on how these terms will be measured or assessed.
- **Consistency in Application:** Without clear guidelines, there is a risk of inconsistent application of the law, leading to uncertainty for businesses and potentially hindering legitimate commercial activities.

Recommendations:

- **Mandated Consultation with the Industry Process:** Initiate a regular consultation process with the industry to refine the monetary and market concentration thresholds, ensuring they are evidence-based and remain appropriate for all sectors.
- **Clarify Definitions and Criteria:** Provide detailed guidance on how "substantial degree of power" and "creating, strengthening, or entrenching" will be evaluated to enhance transparency and predictability.
- **Align with International Standards:** Consider international antitrust frameworks to maintain consistency and facilitate cross-border business activities.
- **Consider Other Factors Affecting Competition:** While monetary or market concentration thresholds indicate the number of alternative acquirers, other considerations such as viable products and/or services substitutes and barriers to entry also influence the intensity or trend of competition, providing a complete picture.

Conclusion

While we support the overarching goals of the Mergers and Acquisitions Reform Bill 2024 in promoting competition, we believe that addressing the concerns outlined above is essential for the legislation to be effective and equitable. We are committed to collaborating with the Treasury to refine these proposals and ensure that they serve the best interests of the Australian economy.

Thank you for considering our submission. We welcome the opportunity for further discussion and are available to provide additional insights or clarification as needed. Should you require further information, please contact Ms Siew Lee Seow, General Manager, Policy and Media, at [REDACTED] or [REDACTED], or Mr David Makaryan, Advisor, Policy and Media, at [REDACTED]

Thank you for considering our submission.

Yours sincerely
Simon Bush
CEO, AIIA



About the AIIA

The AIIA is Australia's peak representative body and advocacy group for those in the digital ecosystem. Since 1978, the AIIA has pursued activities to stimulate and grow the digital ecosystem, to create a favourable business environment for our members and to contribute to Australia's economic prosperity. We are a not-for-profit organisation to benefit members, which represents around 90% of the over one million employed in the technology sector in Australia. We are unique in that we represent the diversity of the technology ecosystem from small and medium businesses, start-ups, universities, and digital incubators through to large Australian companies, multinational software and hardware companies, data centres, telecommunications companies and technology consulting companies