



19 January 2024

Competition Taskforce  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Via email: [CompetitionTaskforce@treasury.gov.au](mailto:CompetitionTaskforce@treasury.gov.au)

Dear Taskforce

**RE: Submission to Competition Review consultation on merger reform**

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission to the Competition Review's consultation on merger reform.

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. The NFF represents Australian agriculture on national and foreign policy issues including taxation, economic policy, workplace relations, trade and natural resource management.

Competition issues aren't new for Australian agriculture. But the lack of competition across Australia's agricultural supply chains is a problem that's getting worse. For decades, market concentration across the Australian economy has increased<sup>1</sup>. As market concentration has increased in Australia, farmers have fewer places to buy inputs and fewer places to sell their products.

Agriculture relies upon open and transparent marketplaces that promote competition within agricultural supply chains, enabling farmers to access requisite inputs and sell their produce at a competitive price. Australian agriculture is generally made up of many small to medium businesses based in regional and remote areas. These individual businesses are sandwiched between heavily concentrated input and output markets that influence the overall market conditions available to farmers.

A variety of issues have contributed to increasing market concentration in the Australian economy. The NFF believes that mergers and acquisitions within the Australian economy are one of the factors. As such, the mergers and acquisition

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<sup>1</sup> <https://e61.in/state-of-competition/>

framework plays an important role in preventing mergers that result in a substantial lessening of competition.

The NFF appreciates that mergers can play an important role in the efficient functioning of the economy. Mergers can allow firms to achieve economies of scale and scope, diversify risk and exit businesses. These benefits can enhance competition if they are passed onto other supply chain participants via lower prices, improved product quality, range, or service. However, to achieve this, the mergers and acquisitions framework must be appropriate to prevent mergers and acquisitions that substantially lessen competition or result in negative outcomes for Australian producers and consumers. That is, the mergers and acquisition framework must facilitate competitive market structures which lead to better outcomes for all supply chain participants.

The NFF believes that in its current form, the mergers and acquisition framework has not been adequate to effectively target and prevent mergers that are anti-competitive. This consultation therefore provides an opportunity to reform the current framework and improve how mergers are reviewed in the economy. This process should ensure that Australia's merger control regime is clear, easy for stakeholders to engage with and risk-based. It should seek to achieve this at the lowest cost possible and in a timely manner, with clear information and resources that support a broad range of stakeholders to participate in the review process.

At a principles level, the NFF recommends this review ensure that Australia's merger and acquisition framework aligns with the OECD's prescriptions so that reviews:

- are effective, efficient, timely and transparent,
- avoid imposing unnecessary costs,
- set reasonable information requirements,
- establish clear and objective notification criteria,
- expedite review of mergers that do not raise material competitive concerns, and
- are procedurally fair, by providing the right to respond, the right to seek review, to hear from third parties and protect confidential information.

To achieve these principles, the NFF supports an administrative model for Australia's mergers and acquisitions framework. This model would require the ACCC to approve proposed transactions before they can proceed. This model would include:

- formal notification to the ACCC of mergers above a certain financial threshold,
- requiring all mergers notified to the ACCC to wait for approval by the 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, including the significance of the assets being acquired to that market,

- changing 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,
- 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.

In addition to these changes, the merger control test within the framework should be amended to consider the different impacts more effectively from a proposed transaction. These changes will provide greater clarity on how a proposed transaction will impact the economy and enhance the ACCC's decision-making capacity in reviewing a proposed merger. These changes should include:

- Update and modernise the list of matters that the ACCC may, and the court must, take into account when assessing the impact of mergers on competition. This could include:
  - changes in market structure as a result of a merger
  - whether the acquisition entrenches or extends a position of substantial market power
  - whether the acquisition is part of a series of acquisitions
  - whether the acquisition would result in the removal of a potential competitor; the nature and significance of assets acquired
  - interlocking directorships.
- Expanding the substantial lessening of competition test to include transactions that 'entrench, materially increase or materially extend a position of substantial market power'.
- Also considering related agreements between merger parties (such as non-compete agreements or agreements concerning supply of goods or services post-merger) as part of the consideration of the effect of the merger on competition, as these agreements may have effects on competition.

Ultimately, this review of the mergers and acquisition framework should ensure that any mergers that result in monopoly or duopoly conditions are the exception not the norm in the Australian economy.

The role of merger and acquisition review is also an important consideration of Australia's Foreign Investment Review Framework. The NFF believes that the competitive effects of foreign investment should be considered to ensure there are no negative impacts from new investment. However, this process must be timely and provide certainty to applicants.

Additionally, the NFF recommends the review consider the possible separation of powers regarding final merger approval or rejection for foreign mergers. This would remove the role of the Treasurer at the end of the Foreign Investment Review Board process from final decision making to allow or block foreign mergers. It would instead empower an independent body, such as the ACCC, thus removing the political process from economic decision making around foreign mergers.

Thank you for the opportunity to make a submission to this process. If you require additional information, please do not hesitate to contact the NFF to discuss this submission. The policy contact is Charlotte Wundersitz, Senior Policy Officer, Trade and Economics ([cwundersitz@nff.org.au](mailto:cwundersitz@nff.org.au)).

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Thomas', with a stylized flourish at the end.

**CHARLES THOMAS**  
Acting Chief Executive Officer