2 May 2025

Re: Merger Assessment Guidelines

Dear Lilla:

My apologies for not being able to meet the submission window for public comments on the ACCC's Merger Assessment Guidelines, as I was away on annual leave and had various commitments before then. I have read the entire document and have a few high-level responses. Hopefully, they will be of use to the ACCC. I list them roughly in the order they appear in my notes from reading the document.

- **Language.** The ACCC's website defines market power as "the ability of a business to insulate itself from competition." This is a minor point, but I have found this definition very useful in the past, particularly around the word 'insulate'. You might consider alluding to this point early in the document, as it could offer clarity to some readers, who may also think about competition as a lack of such insulation.
- **Mergers between close competitors and coordinated effects.** On page 10, consider flagging that the example A/B merger could also give rise to coordinated effects by introducing an asymmetric market structure with a dominant firm and smaller rivals. In such instances, the market has a natural 'leader' emerge that can serve to coordinate the collective action of its smaller followers.
- **Differentiated products**. From 2.4 onwards, the discussion of differentiated products focuses on horizontal differentiation. Consider vertically differentiated products as well. A merger involving parties that are vertically differentiated (think, e.g., a "high quality" and "low quality" airline merger) might create incentives for the merged entity to engage in second-degree price discrimination whereby it increases the price of the high-quality airline and degrade the quality of the low-quality airline to discriminate against consumers with different preferences for airline quality/amenity. This intuition comes from Mussa and Rosen's classic price discrimination model. There may be other potential theories of harm with a merger among vertically differentiated sellers, though discrimination for surplus extraction is first order.
- **Explicit coordination**. In 3.4, I don't know what explicit coordination means. Does this involve firms using word-based communication? Is tacit coordination all forms that exist without firms using words? Perhaps link to the CCA here to more precisely define what you mean by explicit vs tacit. Or give examples.
- **Price wars**. With 3.21, when evaluating risks based on past conduct, you may consider noting that observing price wars among firms in the past is another piece of evidence that would affect the perceived potential likelihood of future coordinated effects. Price wars reinforce such effects, so their existence, perhaps around a demand or technology shock, can indicate the viability of coordinated effects in a market.
- **Coordinated effects: search**. With 3.5, when considering competition risks with coordinated effects, consider whether consumers face informational/search costs when comparing prices or products, which can, in turn, shape the viability of implementing coordinated effects. With pricing, for example, if consumers are less unaware of price differentials over time or across firms, it reduces the cost of some firms engaging in price signalling or price leadership since being temporarily "high priced" goes unpunished by consumers. Mergers that give rise to natural market leaders who can experiment and evolve market pricing structures can be more at risk of coordinated conduct if consumers face search costs.
- **Steering**. With 4.6, demand-side steering might reinforce anticompetitive effects with a vertical merger.
- **Mavericks**. With 5.4, there is a natural question of whether the acquisition of one maverick could be offset by the chance that another firm already in the market might profitability move into taking on the maverick

Address
Level 4,111 Barry Street
Parkville VIC, 3010 Australia

Contact
+61 03 8344 3880
byrned@unimelb.edu.au

role. A market with just one maverick that gets acquired is not necessarily at risk of an SLC with another maverick waiting in the wings. This begs the question of what environments give rise to the possibility of a market supporting one and only one maverick.

- **Serial acquisitions.** With 5.38, I appreciate that the dynamic assessment of multiple serial acquisitions is a relatively new consideration for authorities. Still, I struggled to understand the principles of a process whereby the ACCC might approve mergers in the past and how they are relevant within a three-year horizon for assessing a merger today. Isn't the merger today evaluated based on today's market structure, taking as given mergers in the past 3 years as 'sunk'? I do not understand the incremental consideration in conditioning on other mergers occurring within the past 3 years above and beyond the usual considerations at a given point in time for assessing the risk of an SLC. I have no idea what 'entrench' means here either.
- **Conglomerate effects.** Throughout the document, in the core sections 2-4, there was a clear and consistent structure of 'ability', 'incentive', and (likely) 'effect' in considering competition risks, except for the end with Conglomerate effects. It would be useful, I think, to spell these three key items out more precisely, not just for consistency, but also for offering some clarity on conglomerate mergers. As we all know, these are growing in importance in digital environments with the emergence of, e.g., eco-system theories of harm. This underlines the importance of having a consistent and streamlined discussion of conglomerate effects connected to 'ability,' 'incentive,' and 'effect.'
- **Public benefit.** On Section 7, much has recently been done about the effect of market power and the risk of wage fixing. A merger that ends up paying excessively low wages to workers due to, e.g., anticompetitive wage coordination among sellers, could be flagged as another possible dimension related to public benefit. Acqui-hires have also been identified as a way in which mergers can give rise to less competition in labor markets; a form of unilateral effect. See Bar-Isaac, Johnson, and Nocke (2024) in *Management Science*. Should mergers and their effects on wages be discussed in more depth?
- **Drawing a line?** Further on Section 7, an implication of accounting for 'public benefit' is that price-increasing mergers in industries that create carbon emissions are pro-environmental (think petrol). Does that mean we should be using, e.g., the social cost of carbon to evaluate the net public welfare effects of mergers? What is the principle on "drawing the line" in constructing an overarching social welfare function for merger evaluation? It does not seem that we should, for example, use merger policy for climate goals.

  I am using environmental impacts here as an example. One could imagine other socially related issues, such as longevity with insurance mergers, mental health with social media mergers, financial system stability with bank mergers, etc. Once we open the door to 'public benefit' with merger evaluation, principles are needed to understand the boundaries of potential analyses. Based on Section 7 of the document, I do not have a sense of guidance on how to draw such lines.

Please do not hesitate to contact me with further questions or concerns.

Sincerely yours,

David P. Byrne
Ritchie Chair of Economic Research
University of Melbourne