Submission to the ACCC Merger Guideline
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I read the Merger Guideline document and make some specific comments below from the perspective of an academic economist.

Paragraphs 3.15 and 3.19:

Sannikov and Skrzypacz (AER, 2007) show that tacit collusion cannot be sustained in continuous time when firms operate under incomplete information and can adjust production also in continuous time. That is, when the actions of rivals cannot be observed but only inferred from market data (as in Green and Porter, 1984), and firms act very frequently. The reason is that the signal-to-noise ratio explodes: it becomes impossible to infer whether a departure from equilibrium outcomes is a random shock or a deviation. David Rahman (AER 2014) shows this can be overcome when batching information. Batching observations overcomes the signal-to-noise problem, and delays a reaction.

It is not clear to me how immediately applicable these results may be but they should be borne in mind as a lot of trading it now electronic—so, fast—or even automated—even faster. One can think of electronic platforms fitting this environment with frequent trading and frequent adjustments. The response to batch information fits equally well and may be automated.

Paragraph 4.9 on vertical mergers:

Here is an example of vertical mergers, in which the merging parties enjoyed benefits from a "third" product that is not the main product they trade but is essential to profit maximization. AGL, then a retailer, acquired Loy Yang A, a generation unit. AGL gave to the ACCC an undertaking that it would not interfere in the bidding of LY A in the wholesale market. However, as pointed out by Frank Wolak (Ganz and Wolak, 2007), this merger gave AGL a *cost advantage* in the form of an *uncontracted hedge*. That is, instead of having to purchase forward contracts at market prices to hedge its retail book against wholesale market volatility, AGL simply collects from these high prices on the portion of its retail activity that is covered by the generation capacity. Of course all large retailers pursued that cost advantage. After a series of consolidations, the National Electricity Market is dominated by three "gentailers". The result now is a de facto *foreclosure* of the contract market, which renders retail competition in electricity completely ineffective. That is, the gentailers have no incentive to offer hedge contracts to other retailers. Potential entrants in retail may have to deal with a very small pool of independent generators; and conversely: potential entrants in generation only face a very small pool of counterparties in retail.

The point is that the main product, electricity, is still traded at some wholesale spot price; that input is *not* foreclosed. But entry and effective competition in retail is almost impossible because forward contracting is foreclosed. This problem likely exists in other markets.

Arguably this is a problem of market definition: the market is not just electricity. It is the suite of products and service that are necessary to the production, transport and delivery of electricity.

Paragraphs 5.23 to 5.28:

This section on multi-sided platforms is weak in light of their prevalence and the market power they can wield these days. It is a very challenging area for anti-trust because of the cross-market effects but one that must be further developed. We know from the literature that when these platforms are too small (competitive market), they are barely viable; but if they grow large, at least one side of the multi-sided market becomes monopolised—this is tipping. Balancing these considerations is difficult. Market definition becomes particularly problematic.

Platforms also engage in more standard anti-competitive behaviours like bundling, foreclosing, self-preferencing and others. While these behaviours are well known and described elsewhere in the Merger Guidelines, the Guidelines would benefit from including these explicitly—without prejudice – in the chapter on Platforms and explain how they may relate to platforms acquiring other platforms or acquiring other goods or services that may induce a lessening of competition.

Paragraph 5.36—Serial acquisitions

This is a welcome development. One question that remains is whether these serial acquisitions may fall under the radar if they are each small enough. That is, is there a threshold below which a merger need not be notified to the Commission? If so, is there a risk that these serial acquisitions fall below that threshold?

Paragraphs 5.42 and 5.43—Partial acquisitions

This is also a welcome development. However, it may be necessary to extend this idea of partial acquisition, which is a contract, to the notion of control through contracts. For example in electricity, developers build large-scale batteries, which they contract out to a credit-worthy counterparty. Typically that counterparty is one of the large gentailers. So even thought they do not own the storage unit, they control its operations and can coordinate with their own.

Appendix 1—market definition

Platforms and multisided markets: the SSNIP test as defined is a welcome development. Some work has been done in this area to assess market power, which I reference in a prior submission to the ACCC during its Inquiry into Digital Markets. While now old, this submission may still be informative.

Local market power: the Guidelines make no mention of a quite specific source of market power—market power on a network. This is particular pertinent to electricity markets. In Australia, the wholesale market (NEM) may be construed as the relevant market, and the presence of a fringe competition against the three, large gentailers as evidence of a competitive market. However, on a transmission network, (i) market power is very local, that is, at a transmission node and (ii) because of the physics of power flows, it can be transferred to another node. In light of this, the Commission should consider reserving the right to treat this specific market, and possibly others, differently from the market for cereals, for example, or other standard commodities. Note this may also apply to other markets such as airport slots, train lines and so on.