Comments on ACCC Draft Merger Guidelines

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1. Section 4 (Non-Horizontal Mergers) does not include a theory of harm from coordinated effects (unlike the EC and US guidelines). The literature on the effect of vertical mergers on upstream cartels is relatively unambiguous as long as downstream competition is sufficiently balanced. Vertical integration implies that a defecting independent manufacturer has less downstream firms to sell to and thus less access to consumers. At the same time, the threat of punishment is less severe for an integrated firm. The outlets effect, however, dominates the punishment effect and vertical mergers facilitate collusion (Nocke and White, AER 2007).

   By contrast, if retail competition is asymmetric with a dominant retailer and a smaller competitor, the effect of a vertical merger on the sustainability of collusion depends on the identity of the merging downstream firm. When the more efficient retailer merges with a manufacturer, consumers are worse off as the cartel can sustain higher prices. By contrast, if the less efficient retailer is part of a vertical merger, pre-merger coordination may be disrupted as the integrated company can compete head-to-head with the cartel in the downstream market. In this case, a vertical merger can have a pro-competitive effect without appealing to other efficiency gains such as synergies or avoidance of double marginalization (Gerlach, Journal of Law and Economics, 2025). These arguments also relate to the discussion of maverick firms (5.2 to 5.4).

2. Collusion and Product differentiation in 3.13 point 1: The relationship between product differentiation and the discount threshold above which collusion is sustainable is an inverted U-shape for many common demand functions. Generally, collusion is easiest to sustain for completely homogenous products. However, there is no guarantee that for strictly differentiated products, less differentiation leads to more collusion (Kuehn and Rimler, 2006, SSRN). I suggest rephrasing to something like: “Compared to standard-

ised/undifferentiated product, complex products and differences in product offerings make it more difficult for firms to reach coordination." NB: There is currently a typo in this paragraph ("tend to it make it").

3. Collusion and Multi-Market Contact in 3.19 point 2: The statement that retaliation is stronger with multi-market contact is correct. The overall argument is, however, in complete. Multi-market contact also allows to deviate in multiple markets. The pro-collusive effect of multi-market contact comes from the cartel's ability to use excess collusive rent (cartel profits minus deviation profits minus punishment profits) from a more collusive market to sustain collusion in a less collusive market (in the context of cartel prosecution, see Choi and Gerlach, 2013, Journal of Industrial Economics).

4. Cartel Stability (Incentives to deviate/Retaliation, 3.14-3.20): While there is some benefit of disentangling the effects of market characteristics with respect to deviation and punishment effect, the exposition may be more compact/concise if those paragraphs were subsumed into "Other product and market conditions" (3.13).

5. Tacit versus explicit collusion (3.4): The last sentence of this paragraph ("This type of coordination.. ") seems to imply that tacit coordination is part of normal competition. This could potentially weaken deterrence of tacit coordination.