Submission to the ACCC on Merger Assessment Guidelines (March 2025)

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Introduction

This submission puts forward five areas where empirical and economic theory could further inform ACCC's views on mergers, following its March 2025 timely update to its *Merger Assessment Guidelines*. I draw on recent research—both my own and that of close collaborators—as well as key points raised during the recent ACCC consultation session.

1. Data Linkage and the Assessment of Conglomerate Effects

While the current Guidelines acknowledge bundling in the context of conglomerate mergers, they may understate the broader competitive implications of data-rich conglomerates that operate across overlapping or complementary markets. The ability to link consumer data across business units or platforms enables merged entities to engage in sophisticated price discrimination, customer targeting, and strategic foreclosure—even in the absence of explicit bundling strategies. At the same time, data integration may generate allocative efficiencies by improving matching and personalising services. Thus, such scenarios involve a trade-off between potential consumer exploitation arising from increased market power and efficiency gains that may enhance overall market performance.

A recent paper by Herresthal et al. (2023) provides a formal framework for assessing this trade-off in settings where firms use data from one market (e.g. product purchases) to price insurance in another. Their analysis shows that the impact of cross-market data linkage depends critically on the underlying consumer mix. When high-risk consumers predominate, data sharing may enhance efficiency and benefit both consumers and firms. However, when low-risk consumers are more prevalent, the welfare implications become more complex. In particular, the authors identify cases in which data integration unexpectedly backfires—reducing the merged entity's profit while increasing the surplus for low-risk consumers. These findings suggest that cross-market data advantages are not universally beneficial to merging firms and that merger assessments should consider how informational complementarities interact with strategic consumer response and market structure.

As raised during the recent ACCC consultation, I encourage the Commission to broaden its treatment of conglomerate effects beyond bundling, explicitly considering the role of data-driven market power. This point was also complemented by Professor Zhijun Chen's presentation, which highlighted additional conglomerate effects.

2. Sequential Timing, Strategic Responses, and Information Asymmetry

A second point raised during the ACCC consultation—this time by Professor Simon Loertscher—highlighted how mergers can alter the informational environment in a market, particularly by creating or reinforcing asymmetries in firms' access to market information.

This concern is investigated in the recent paper by Byrne et al. (2024), which develops a rigorous theoretical and empirical framework to demonstrate how informational asymmetries can facilitate higher prices and reduce competitive intensity.

This work is highly relevant to market transparency, discussed in Sections 3.10–3.12 of the Guidelines. In the Australian petrol market context, Byrne et al. (2024) show that when Coles ceased monitoring its competitors' prices, it effectively became a first-mover, with rival firms adjusting prices after observing Coles' actions. This sequential timing structure led to higher prices, as the first-mover's behaviour anchored the decisions of later movers.

Crucially, the paper argues that if multiple firms lacked access to competitor prices, pricing would be more aggressive and competition more intense. This insight implies that mergers that preserve—or exacerbate—asymmetric access to information may distort strategic dynamics, raising equilibrium prices. Accordingly, merger review should consider how deals may reshape information flows and timing structures, not just traditional concentration measures.

3. Asymmetric Retailers and Multi-Tiered Competition

The dynamics between Coles and Woolworths, or a hypothetical merger between Aldi and IGA, illustrate that Australian retail competition is often shaped by *asymmetric firms*—entities with markedly different cost structures, business models, geographic strategies, and target demographics.

While the Guidelines briefly address multi-market competition in Section 5, I recommend placing greater emphasis on asymmetry in business models. For instance, Aldi's limited assortment, private-label focus, and cost-minimisation strategy position it as a fundamentally different competitor from full-line supermarkets. A merger involving such players may not activate standard diversion metrics, yet it can have substantial effects on consumer choice, entry deterrence, and pricing discipline.

Explicitly accounting for such asymmetries would enable a more realistic assessment

of mergers involving firms with non-standard, yet potent, competitive influence. This issue is conceptually linked to the point raised in Section 2, where firms differ in their *informational positions and strategic timing*. Here, the asymmetry lies in structural characteristics—such as product range, branding strategy, and customer segmentation. In both cases, recognising and incorporating heterogeneity is essential for accurately evaluating merger impacts.

4. Structural Frameworks for Collusion with Price Competition

In collaborative work with Nicolas de Roos (de Roos and Smirnov, 2020; 2021), we have developed structural models that assist regulators in assessing *coordinated effects* and *non-linear pricing behaviour*, offering useful complements to the tools outlined in Chapter 2 of the Guidelines.

The standard Herfindahl-Hirschman Index (HHI) approach is most effective under models of quantity competition. However, applying an equivalent index or simulation approach becomes significantly more challenging in environments characterised by price competition. Our papers provide a tractable and empirically grounded framework that could serve as a *workhorse model* for such settings, particularly when firms engage in dynamic price coordination or compete using strategic price dispersion over time.

A key point to emphasise is the importance of incorporating the *information environment on the demand side*. If consumers have limited access to price information, suffer from bounded rationality, or face search frictions, the intensity of price competition may be substantially reduced. This environment likely modifies both the unilateral and coordinated effects of mergers—an issue not explicitly addressed in Section 2 of the Guidelines. Our work demonstrates that these frictions can also alter the sustainability and mechanisms of collusion and thus should be accounted for when assessing merger effects.

5. AI-Based Tools for Predictive Merger Screening

Finally, my last point is advice for the ACCC in implementing the guidelines. The ACCC should consider exploring the use of AI-enabled tools to support early-stage screening, simulation, and prioritisation of merger investigations. Such tools could:

- Identify mergers with a high likelihood of adverse effects based on structural and behavioural indicators;
- Detect serial acquisition patterns and cumulative effects;
- Integrate firm-level conduct data, pricing histories, and market outcomes to flag cases warranting deeper investigation.

While these tools are not a substitute for expert judgment, they have the potential to enhance regulatory capacity, improve resource allocation, and uncover non-obvious risks—particularly in complex, data-rich markets.

A critical prerequisite for the successful application of such tools is the availability and quality of underlying data. I encourage the ACCC to consider further efforts to identify, curate, and facilitate access to relevant datasets that would enable the effective implementation of predictive screening methods.

In terms of relevant experience, I have previously worked on machine learning models for forecasting electricity imbalance prices in the UK (Deng et al., 2024), and I am currently collaborating with Quantaco in the hospitality sector, where we develop predictive models for restaurant-level demand. I would welcome the opportunity to explore collaborative applications of AI and predictive analytics in the context of merger assessment and competition policy.

Conclusion

The ACCC's revised *Merger Assessment Guidelines* demonstrate a commendable commitment to evidence-based and forward-looking analysis. My suggestions above are in the same spirit. The five areas offer significant extensions that can effectively address the strategic, informational, and data-driven complexities inherent in contemporary mergers. I would welcome the opportunity to distil insights from our research into particular case studies in the Australian context or even provide other economic expertise.

References

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