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Reforming mergers and acquisitions – exposure draft: Ai Group Submission

Ai Group appreciates this opportunity to provide input on the Government’s Exposure Draft legislation to change Australia’s mergers regime.

The Australian Industry Group (Ai Group®) is a peak national employer organisation representing traditional, innovative and emerging industry sectors. We have been acting on behalf of businesses across Australia for 150 years.

Ai Group and partner organisations represent the interests of more than 60,000 businesses employing more than 1 million staff. Our membership includes businesses of all sizes, from large international companies operating in Australia and iconic Australian brands to family-run SMEs. Our members operate across a wide cross-section of the Australian economy and are linked to the domestic and global economy through national and international supply chains.

We note that Australia’s existing mergers regime has co-existed with the success, flexibility and dynamism of the Australian economy over an extended period. There is always room for refinement and improvement and in several respects the proposed legislation has the potential to further improve on the contributions that Australia’s mergers regime has made to these achievements.

We certainly appreciate the stated intention of the changes, namely, to create: “[a] single, streamlined process for the review of acquisitions (except for foreign acquisitions) [to] ... enhance efficiency, predictability and transparency for businesses, stakeholders and the community.”

We also appreciated the public consultation on the Government’s initial Merger Reform Paper conducted between 20 November 2023 and 19 January 2024.

In contrast, the period of consultation over the Exposure Draft Legislation is confined to the considerably shorter period between 24 July and 13 August 2024.

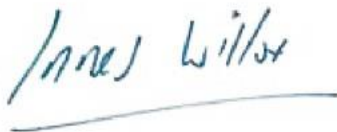
This very short period is particularly problematic in relation to the new proposal to change the “substantial lessening of competition” definition and apply this changed definition in areas of misuse of market power; anti-competitive agreements; exclusive dealing and concerted practices in the *Competition and Consumer Act 2010*. This new change was not previously foreshadowed, was not considered in the earlier period of consultation and has the potential to give rise to a range of potentially unintended consequences.

We acknowledge that additional consultation is foreshadowed, including in relation to the important areas of notification thresholds; what is a notifiable merger; the merger review timelines; fees; procedural safeguards; and penalties.

In our view, the parameters decided upon in these areas will play a material role in whether the proposed legislative changes will achieve the intention of creating a streamlined process that will in fact deliver improvements in efficiency, predictability and transparency. In the meantime, it is not apparent that the exposure draft legislation will have the advantages that the Government states it hope to achieve.

Accordingly, Ai Group strongly recommends that the Government not proceed with this legislation until there has been an opportunity to conduct the foreshadowed consultation on key features of the new regime and to allow for further consideration of, and input into the more fully revealed nature of the Government’s legislative proposal.

Yours sincerely

A handwritten signature in blue ink that reads 'James Wilton', with a horizontal line underneath.