Draft merger assessment guidelines

Australian Competition and Consumer Commission

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Executive Summary

1. The Competition and Consumer Law Committee (**Committee**) of the Business Law Section of the Law Council of Australia welcomes the opportunity to make a submission to the Australian Competition and Consumer Commission (**ACCC**) on the revised draft of its merger assessment guidelines (the **Assessment Guidelines**).

2. Generally, the Committee acknowledges the careful and thorough work that has been undertaken by the ACCC as reflected in the Assessment Guidelines, particularly under time pressure. For the most part, and subject to our comments below, the Committee agrees that the draft reflects an update and modernisation to reflect current understanding and practice and does not represent a fundamental shift away from concepts and approaches as they are currently understood.

3. However, as the ACCC is aware, the shift to an ACCC-overseen administrative model, with the potential for more regular Tribunal review, potentially increases the substantive legal importance and role of the Assessment Guidance as a document that is likely to inform the reasons of both decision makers.

4. In that sense, the Assessment Guidelines play an important role and should not be viewed merely (or even primarily) as an explanatory document aiming to provide an accessible explanation of merger concepts for the uninitiated. That task can be left to other publications, like FAQs. Consistent with similar regulatory guidance in other jurisdictions,[1] the Assessment Guidelines will now operate as an important and substantive legal instrument used by the ACCC as primary decision maker to set out its analytical framework and approach.

5. With that context in mind, our reasonably high-level comments are as follows:

   (a) At times, the Assessment Guidelines over-simplify or seek to paraphrase technical economic concepts.

   For example, we consider that the section titled "How mergers can raise competition concerns"[2] with associated illustrations and examples, over-simplifies the economic issues raised in a number of respects and, if needed, is best left for other ACCC publications.

   In other cases, non-technical words are used which potentially affect the interpretation of the Assessment Guidelines. For example, references to "*alternatives*" where we understand an economic *substitute* is intended, or references to "linking" when it appears to be limited to formal bundling. We would suggest that paraphrasing of this kind is unhelpful in a substantive analytical document of this kind.

   (b) The Assessment Guidelines would benefit from more nuance and balance.

   The Committee is concerned that the Assessment Guidelines present an analytical framework that appears to be based on a presumption that mergers are likely to substantially lessen competition. Such an approach is at odds with the ACCC's approach in practice and, moreover, with the approach

[1] See, for e.g., the 2023 US Merger Guidelines and the European Commission Horizontal and Non-Horizonal Guidelines.
[2] Assessment Guidelines at p9-14.

required by the terms of the CCA. The Committee respectfully submits that the Assessment Guidelines should acknowledge the efficiency-enhancing and pro-competitive features of some types of merger, especially vertical, conglomerate mergers and those involving smaller firms or serial acquisitions.

(c) The Assessment Guidelines should acknowledge where some concepts or theories of harm are contested, even if the ACCC ultimately has a preferred position.

There are a number of areas where the economics is contested. This includes, for example, the approach taken to theories of harm involving coordinated effects, the acquisition of potential or nascent competitors, including both theories of harm based on the loss of future potential competition, whether of an actual or perceived potential form.

(d) More generally, the Committee submits that the Assessment Guidelines overstate the risks to competition from mergers involving potential or nascent competitors.

The Committee submits that that the Assessment Guidelines clarify the limited circumstances in which mergers involving potential or nascent competitors might operate to give rise to a likely substantial lessening of competition, including forms of robust evidence that may assist, especially given the inherently speculative nature of these theories of harm.

(e) More guidance would be beneficial in relation to the newly introduced concept of “creating, strengthening or entrenching” a substantial degree of market power.

The Committee acknowledges the ACCC view that the new phrase added to the SLC test should be seen as an ‘elucidation’ of the current test, rather than a change in its substantive meaning.

Nonetheless, the ACCC also sees the words as increasing the economic focus or emphasis on market power and the effect of any incremental change in such power when applying the test.[3] This is still a material change and what does it mean in terms of the ACCC’s analytical approach? What indicia of market power should be given greater weight in merger matters under the new test and what data or economic evidence of the likely effects of an incremental change are valuable? More guidance on this issue would be particularly valuable.

[3] Assessment Guidelines [1.26].

Framework and approach to the Assessment Guidelines

6. The Committee notes that the Assessment Guidelines do more than provide practical guidance to merger parties and advisers. In the Australian merger context, they take on a substantive importance and are likely to do so more often, and with greater emphasis, under the new regime.

7. The Assessment Guidelines set out the analytical framework that the ACCC as first instance administrative decision-maker will apply in assessing mergers and acquisitions. Under the new regime, they will be important in the context of the ACCC's determinations.

8. The Federal Court and the Australian Competition Tribunal (**Tribunal**) have often referred to the current merger assessment guidelines in their assessments of merger matters, demonstrating the important role that the guidelines play.[4] For example, in the *ACCC v Pacific National* first instance and appellate judgments, passages and terminology contained in the current assessment guidelines were referred to extensively in considering the likely effects of non-horizontal mergers.[5]

9. The Committee anticipates that, given the ACCC's role as first instance decision-maker and resulting removal of the right for merger parties to have mergers determined by the Federal Court,[6] the Assessment Guidelines will take on even greater importance under the new regime.

10. With these observations in mind, the Committee recognises the laudable goals of making the Assessment Guidelines, "*more accessible for businesses, assisting them to better assess the competition risks of a proposed acquisition*"[7] and helping "*merger parties and their advisers to understand how the ACCC will assess acquisitions under the new regime and provide greater predictability and transparency regarding its decision making*".[8]

11. However, the Committee is concerned that in doing so the Assessment Guidelines may not incorporate sufficient economic rigour, balance and academic support to properly fulfil their important substantive function—both before the ACCC and the Tribunal.

12. The Committee is of the opinion that fit-for-purpose Assessment Guidelines should prioritise predictability and transparency.

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[4] See eg *Applications by Australia and New Zealand Banking Group Limited and Suncorp Group Limited* [2024] ACompT 1 (**ANZ / Suncorp Determination**); *ACCC v Pacific National Pty Ltd (No 2)* [2019] FCA 669.
[5] *ACCC v Pacific National Pty Ltd (No 2)* [2019] FCA 669 at [111], [525]-[529], [785], [810] and [931]; *ACCC v Pacific National Pty Ltd* [2020] FCAFC 77 at [107], [131]. See also the use of the Herfindahl-Hirschman Index for market concentration in the ANZ / Suncorp Determination at [404] and [405], and small but substantial non-transitory increase in price / hypothetical monopolist test for substitution in the ANZ / Suncorp Determination at [362] and *ACCC v Metcash Trading Ltd* [2011] FCAFC 151 at [248].
[6] Division 1A – Applications for review of certain decisions of the Commission.
[7] *Statement of Goals for Merger Reform Implementation, ACCC 10 October 2024*, p 9.
[8] Merger assessment guidelines consultation hub landing page, *ACCC 20 March 2025.*

13. The Assessment Guidelines need to provide a balanced and rigorous analytical framework that can be relied upon with a degree of confidence by merger parties and their advisors.[9] For example, the Committee is concerned that departures from accepted terminology such as *“bundling”* and *“substitutes”*—and instead inconsistently using terms that are not widely recognised in the economic literature, such as *“linking”* and *“alternatives”*—as well as overly simplistic diagrams, risk diminishing the predictability and rigour that the Assessment Guidelines are intended to provide.

14. It is also unclear to the Committee why some key concepts are contained in the appendices (such as the small but substantial non-transitory increase in price / hypothetical monopolist test), rather than in the body of the Assessment Guidelines. The Committee recommends incorporating the appendices into the main body of the Assessment Guidelines and would welcome more in-depth analysis of these areas.

Applying modern economic thinking

15. The Committee welcomes the approach the ACCC has taken to setting out the theories of harm that may apply to mergers. This can help merger parties and third parties focus their efforts on how a merger may harm competition and gather the most useful evidence to assess the likelihood of such harm materialising post-merger. In turn, this has the potential to improve the efficiency of the merger review process for everyone involved.

16. In order to maximise these benefits, a theory of harm should set out how competition is harmed, the conditions under which that is likely to take place, and more detail around the economic theory or case law on which it is based.

17. One way in which the Assessment Guidelines could provide greater assistance to merger parties and third parties may be to set out relevant references to case law or economic literature that support the theories of harm or approach. For example, it would be helpful for the ACCC to set out more explanation to support how competition is affected in the theory of harm described as ‘*[a] merger in a concentrated market*’.[10] As it stands, it is not clear in this section whether this is a unilateral theory of harm when there are homogenous products or one involving coordinated effects—these arise in different situations, so it would be helpful to separate them.

18. The Committee welcomes the ACCC’s recognition that its forward-looking analysis of the competitive effects of a merger needs to be grounded in commercial reality, such that the evidence of parties and market participants will be crucial. We also agree that adopting a flexible approach to market definition is appropriate, while noting that there can be out-of-market constraints (the latter which are not at all referred to in the Assessment Guidelines).

19. However, the Committee respectfully submits that there are some ways in which the Assessment Guidelines could be improved to reflect modern economic thinking.

First, there is an apparent over-emphasis on concentration in the Assessment Guidelines.[11]

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[9] This may include overseas investors. For mergers with multi-jurisdictional aspects, adopting common and consistent terminology with other key overseas competition law regulators for routine economic concepts may assist in this regard.
[10] Assessment Guidelines, pp 10-11.
[11] For example, ‘Concentration’ has its own heading in the description of the analytical framework (Assessment Guidelines, p 19); and there is a section in the appendix on ‘Market shares and concentration’ (Assessment Guidelines, p 65-66).

20. Examining the degree of concentration can be helpful in screening mergers, because those that involve a small increase in market share under any market definition can be immediately permitted. Otherwise, however, concentration is merely one relevant consideration amongst many and necessitates a definition of a relevant market that itself can be contentious, difficult and time-consuming. Its probative value depends on the nature of competition, the robustness and availability of market data, the theory of harm being considered and other relevant facts, such as the extent of barriers to entry.

21. It would therefore be helpful for the Assessment Guidelines to set out the relevance of market shares, e.g. as a screening mechanism in Phase 1.

Second, while there is an understandable focus on potential economic harms in the Assessment Guidelines, other economic factors or benefits from vertical and other mergers should be acknowledged.

22. While the Assessment Guidelines rightly begin by acknowledging the importance of mergers and acquisitions to the efficient functioning of our economy and that the vast majority are not anti-competitive,[12] the remainder of the document largely focuses on harms, rather than benefits.[13]

23. This is most apparent in the section on vertical mergers.[14] There is no recognition in this section of the potential benefits to competition from vertical mergers, whilst the Assessment Guidelines state that a 'common concern' is that the merged firm may be able to foreclose rivals after a vertical merger.[15]

24. This seems out of step with recent merger experience[16] and longstanding economic thinking, which views vertical mergers as commonly—even, typically—efficiency-enhancing.[17] It also represents a change from the existing ACCC merger guidelines, which state that vertical mergers will often promote efficiency by combining complementary assets/services which may benefit consumers.[18] The pro-competitive potential for vertical mergers is something acknowledged by international agencies: the European Union's Non-Horizontal Guidelines, for example, dedicates several of its opening paragraphs to acknowledging the potentially pro-competitive effects of non-horizontal mergers, noting specifically their 'substantial scope for efficiencies'.[19]

25. Vertical mergers involve at least the merger of complementary products, eliminate the potential for double marginalisation (or double mark-up) of the two products, and thereby put pressure on prices to fall.[20] This is mentioned in a later section, but it is not clear that this refers to an efficiency of vertical mergers. People who are not experts in competition law or economics are not likely to understand which types of efficiencies stem from which types of mergers.

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[12] Assessment Guidelines, p 6.
[13] Approximately two pages describe efficiency benefits of mergers. (Assessment Guidelines, pp 51-53).
[14] Assessment Guidelines, [4.4]-[4.26].
[15] Assessment Guidelines, p 31. In a later chapter on countervailing factors, a list of efficiencies is provided with at least one referring to double marginalisation, which can arise from vertical mergers. However, there is no clear explanation of the benefits that vertical mergers bring, nor is there recognition that vertical mergers are less likely to harm competition than horizontal mergers.
[16] Only one of the 11 mergers the ACCC has opposed in the last ten years had a significant vertical component – *Pacific National Pty Ltd / Linfox - proposed acquisitions of Intermodal assets from Aurizon.*
[17] Carlton D, et al, A Retrospective Analysis of the AT&T/Time Warner Merger, The Journal of Law and Economics, Vol 65, pp 467-468.
[18] Current ACCC merger assessment guidelines, [5.19].
[19] European Union Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07), [10]-[13].
[20] Carlton, D, The 2023 Merger Guidelines: A Critical Assessment, Review of Industrial Organisation, 2024, p 139.

26. The Committee therefore suggests that the Assessment Guidelines set out the various potential efficiencies from vertical mergers separately from a discussion of other efficiencies to help parties assess and present the efficiencies that may arise from their particular merger. This could include a description of the evidence and analysis that the ACCC would take into account when reviewing these efficiencies.

Third, the descriptions of serial acquisitions and the acquisition of nascent competitors and potential competition also fail to acknowledge economic benefits and efficiencies.

27. In both cases, the Assessment Guidelines set out the potential harms to these acquisitions without a discussion of the well-recognised benefits to competition that they bring.[21] For example, serial acquisitions are consistent with a large firm benefiting from economies of scale and being able to operate the smaller firms more efficiently.

28. In the context of nascent competitors and potential competition, there is a clear asymmetry between the requirement for robust evidence (typically including recent examples) for the ACCC to conclude that entry or expansion will occur in assessing a merger, as compared to the weight attributed to the loss of potential competition. The weight attributed to potential competition necessarily depends on whether it is commercially realistic and the likelihood that it will eventuate. To that end, the longevity of mavericks and potential entrants, and the sustainability of their conduct in the long run (and the relevant timeframe for the long run) needs to be taken into account. For example, in markets requiring long-term investment, if new entrants are unlikely to sustain the level of ongoing investment required to maintain or expand their offerings, then their future competitive value is low.

29. Overall, the Committee submits that a more balanced description of the effects that serial acquisitions and the acquisition of nascent competitors can have on competition is needed, including the pro-competitive (and efficiency-enhancing) effects of these acquisitions.

30. The Assessment Guidelines should not create the impression that vertical, serial or other types of acquisitions should be presumed to be likely to lessen competition.

Fourth, the Assessment Guidelines could explore differences in the way competition works across different types of markets.

31. Modern economic thinking recognises that the effect of a merger on competition depends on the nature of competition itself. For example, competition may be mostly on price where customers can buy all they want at a publicly posted price, firms may compete to produce a certain amount with prices determined by the total produced in the market, firms may compete mostly by innovating to produce new products, or firms may compete in a bidding or auction style, manner etc.

32. These forms of competition require different analyses and evidence. The Assessment Guidelines could be improved by setting out how this analysis and evidence varies depending on how competition works in a given market. Consistent with this, the draft long form for notification of acquisitions for horizontal mergers includes a request for a description of the nature of competition.[22]

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[21] Assessment Guidelines, [5.36]-[5.40].

[22] Appendix A, item A1(a).

Market power and the modified SLC test

33. The Committee submits that the Assessment Guidelines could be improved by describing market power in a more nuanced and balanced manner. The current description of market power begins with a quote from QCMA that *“the antithesis of competition is undue market power”*, but the ‘undue’ qualification is neither explained nor referred to again in the Assessment Guidelines. This may give the incorrect impression that all market power is harmful, when, in fact, market power is necessary to make markets work, in the sense that all firms strive to have (and often do have) a degree of pricing power. In the context of mergers, any concern must only be where market power is *undue* or substantial and created, strengthened or entrenched by a transaction.

34. Market power is not harmful for consumers in all circumstances. It provides an incentive for firms to improve their products and services, reduce costs and lower prices. Market power is only a problem when it is ‘undue’ and/or enduring, and so more likely to be regarded as substantial.

35. While it is helpful that the ACCC has clarified that the new addition to the SLC test (i.e. *“creating, strengthening and entrenching a substantial degree of market power”*) is merely an elucidation of the ways in which a substantial lessening of competition can arise, rather than a change to the meaning of a substantial lessening of competition, the Assessment Guidelines could be enhanced by a more detailed description of how the ACCC will assess this concept, given that it is new and has been expressly introduced under the new regime.[23] For example, will this involve an assessment of whether a merger party has a substantial degree of power in a market to begin with? If so, how will that assessment be undertaken? Otherwise, how can market power be created, strengthened or entrenched in a manner that distinguishes it from the presumptive incentive for all firms to improve their price, quality and service offerings and so be more attractive to consumers? What kind of increment will be likely to result in a substantial lessening of competition?

36. The Assessment Guidelines also make a number of generalised statements about market power that are inconsistent with rigorous analysis required in a merger. For example, the Assessment Guidelines state that: *“The more market power one party already has, the more likely it is that a merger will entrench that market power and be a ‘substantial’ lessening of competition”*.[24]

37. This may be true in some circumstances, but not in others. For example, a horizontal merger is more likely to lead to unilateral effects when there are high barriers to entry. In that case, the stronger market power to begin with (due to the barriers to entry) increases the probability that a merger lessens competition, relative to a situation in which firms do not have market power due to low barriers to entry.

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[23] This is currently described in two paragraphs – Assessment Guidelines, [1.26]-[1.27].
[24] Assessment Guidelines, [1.8].

38. On the other hand, the fact that a merging firm has more market power may not imply that the risk of a substantial lessening of competition is greater when examining unilateral effects with homogenous products. In that case, it is the change in market share, not the level of market share (and so not the *ex ante* degree of market power), that is the key determinant of how much competition is reduced by a merger.[25] Similarly, the existence of a degree or greater degree of pre-merger market power may not increase the likelihood of a substantial lessening of competition when examining the coordinated effects of a merger. For example, a merger involving a firm with a degree of market power may make the market less symmetrical and collusion less likely, whereas a merger involving two small firms with no market power may make collusion more likely if one of the firms is a maverick.

39. To this end, the Committee suggests that the ACCC clarifies that a merger where there is a high degree of concentration does not necessarily increase the risk of a substantial lessening of competition—depending on the facts and circumstances, there may be reasons why that is not the case.

Coordinated effects

40. There are a range of views within the Committee regarding the appropriate approach to adopt to an analysis of coordinated effects, as a theory of harm. This reflects that the area is nuanced and contested—both in Australia and globally.

41. The Committee submits that more of this debate and nuance might be acknowledged in the Assessment Guidelines, recognising that the ACCC should certainly express its preferred analytical position so that this is understood. The Committee would also welcome more detailed guidance as to the factors that the ACCC will consider, including the relative weight that it may be appropriate to give to particular factors—such as price transparency—when assessing the likelihood that a merger could give rise to coordinated effects.

Conglomerate mergers

42. The Committee submits that the Assessment Guidelines should not abandon the 'ability-incentive-effect' framework for assessing mergers that give rise to conglomerate effects and that there needs to be more detailed information in respect of the alternative scenario counterfactuals identified.

43. Offering a 'one stop shop' is not necessarily problematic unless other factors are present. Customers buy lots of different combinations of products and services together from the same and different suppliers. If there is no additional benefit beyond having a single point of contact for sales, adverse competition effects are unlikely to arise.

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[25] Kaplow, L, Horizontal merger analysis, Discussion paper 1049, Harvard Law School, p 13.

Treatment of potential or nascent competition

44. The Assessment Guidelines consider two theories of harm based on potential competition resulting from an established supplier acquiring a startup developing a competing product.

- **Loss of future competition** (also referred to as **actual potential competition**). If the established supplier acquires the startup, the ACCC considers *"that will prevent the potential for [the startup] to enter or expand in a way that might have otherwise increased competition"*.[26] The draft guidelines hypothesise that the established firm may acquire the startup to neutralise the competitive threat it poses and to strengthen or entrench its position in the market.[27]

- **Loss of dynamic competition** (also referred to as **perceived potential competition**). The ACCC considers that the prospect that the startup will grow and become a close competitor has a constraining effect on the established supplier. The Assessment Guidelines note that, even if there is evidence indicating that entry might ultimately not be successful, the removal of a potential entrant may be problematic.

45. The existence of both theories of harm is well recognised in US case law and, most recently, in the 2023 US Merger Guidelines.

46. Nevertheless, it should be acknowledged that the US case law also reflects a long string of losses in relation to the theory of harm based on loss of future competition/actual potential competition. The most recent loss occurred in *FTC v Meta Platforms, Inc*, in relation to the acquisition of Within Unlimited, Inc, where the Federal Court denied the FTC's application for a preliminary injunction to block the merger on the basis of a theory of actual potential competition—namely that, absent the merger, Meta would have inevitably found an entry strategy. The Court stated:

> *To the extent the FTC implies that—based solely on the objective evidence of Meta's resources and its excitement for VR fitness—it would have inevitably found and implemented some unspecified means to enter the market, the Court finds such a theory to be impermissibly speculative.*[28]
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> *… [T]he FTC may not rest solely on evidence of Meta's considerable resources and the company's clear zeal for the VR dedicated fitness app market as a whole; the evidence must show that Meta had some feasible and reasonably probable path to de novo entry.*[29]

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[26] Assessment Guidelines, at 11, and para 5.5 et seq.
[27] Ibid.
[28] See FTC v Meta Platforms, Inc (US Fed Ct ND Cal) (ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION. Signed by Judge Edward J. Davila on 1/31/2023. (Final Redacted Public Version re 546 Sealed Order) (crr, COURT STAFF) (Filed on 12/13/2023), at 53.
[29] Ibid, at 54.

47. As noted by Professor Hovenkamp, when the established firm is a monopolist, concerns about potential entry are substantial, and perceived potential entry will therefore constrain pricing to a level below which the incumbent is likely to consider the entrant will be deterred. However, where the target market is an oligopoly, more speculation is involved—that is, without reaching agreement, a theory of perceived potential competition requires that firms tacitly coordinate a limit price to deter the prospective entrant.[30] If firms do not tacitly collude to arrive at a limit price, then the effect of perceived potential competition without the merger does not exist.

48. In relation to the theory of harm grounded in a loss of dynamic competition—or perceived potential competition—the US Supreme Court identified two conditions necessary to establish a case based on this theory:

- the potential entrant has characteristics, capabilities and economic incentives to make it a perceived potential new entrant; and
- the firm's presence on the fringe of the market has tempered conduct of existing market participants.[31]

49. Therefore, both objective and subjective evidence will be necessary. Both elements, however, rely on a degree of speculative judgment, by both the fact finder, as to whether the potential entrant was "objectively" likely to be a competitive threat, and also by market participants, based on their subjective perceptions of competition.

50. As Professor Hovenkamp has also noted, there is a real question as to how necessary and useful theories of harm based on potential competition are, in light of other tools of market analysis; namely, market definition and entry barriers. If the market is sufficiently broadly defined then a potential competitor is characterised as an actual competitor. Where barriers are low, then potential competition is not a significant concern. If they are high, and the acquiring firm cannot obviously enter without the acquisition, then there cannot be any merger-specific competition concern.[32]

51. The Committee is concerned that, given the inherently speculative nature of these theories of harm and rare circumstances in which there is likely to be cogent evidence that a merger is removing a competitive constraint based on a perceived threat of potential entry or realistic likelihood of organic growth in lieu of the acquisition, there is a significant risk of overdeterrence and bias against acquisitions of small and start up competitors that provide no meaningful constraint on actual competition.

52. Prohibiting mergers based on expansive theories of harm of potential competition (whether actual or perceived) would lead to chilling investment in startups and innovation. Investors are likely to be deterred where the risk of return is increased due to the significant barriers to exit imposed if startups are unable to be acquired by incumbents due to an expansive doctrine of potential competition. In this way, barriers to exit created by overly restrictive prohibitions on mergers would be likely to result in barriers to entry, as investors choose to deploy capital elsewhere. Such consequences are surely at odds with the goal of creating a vibrant competitive landscape in Australia, to the benefit of consumers and small business.

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[30] See Professor Herbert Hovenkamp, "Potential Competition," *U of Penn, Inst for Law & Econ Research Paper No. 23-36*
Antitrust Law Journal (forthcoming) (2024) at 28-29.
[31] See United States v. Marine Bancorporation, 418 U.S. 602, 639-640 (1974)
[32] See Hovenkamp (2024), supra, at 32.

53. Given these risks, the Committee recommends that that the Assessment Guidelines clarify the limited circumstances in which the doctrines might operate, with robust evidence required (which would align with the approach adopted in relation to assessing the potential for new entry or expansion). Similar robust proof is required when assessing 'pipeline' competition in the pharmaceutical context, for example, where thorough analysis is given to the likelihood of a pipeline product progressing to commercialisation and sales to customers.

54. Further, the discussion could be strengthened by references to the relevant case law or literature and a more detailed discussion acknowledging the range of reasons why a potential competitor may be acquired, which recognises not only anticompetitive rationales but also procompetitive rationales for acquiring potential competitors.

Annexure A: About the Business Law Section of the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its Constituent Bodies on federal, national, and international issues; and promotes the administration of justice, access to justice, and general improvement of the law.

The Business Law Section of the Law Council furthers the objects of the Law Council on matters pertaining to business law.

The Section provides a forum through which lawyers and others interested in law affecting business can discuss current issues, debate and contribute to the process of law reform in Australia, and enhance their professional skills.

The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

The Business Law Section has approximately 1000 members. It currently has 14 specialist committees and working groups:

- Competition & Consumer Law Committee
- Construction & Infrastructure Law Committee
- Corporations Law Committee
- Customs & International Transactions Committee
- Digital Commerce Committee
- Financial Services Committee
- Foreign Corrupt Practices Working Group
- Foreign Investment Committee
- Insolvency & Reconstruction Law Committee
- Intellectual Property Committee
- Media & Communications Committee
- Privacy Law Committee
- SME Business Law Committee

- Taxation Law Committee

The Section has an Executive Committee of 12 members drawn from different states and territories and fields of practice. The Executive Committees meet quarterly to set objectives, policy and priorities for the Section.

The members of the Section Executive are:

- Dr Pamela Hanrahan, Chair
- Mr Adrian Varrasso, Deputy Chair
- Dr Elizabeth Boros, Treasurer
- Mr Philip Argy
- Mr Greg Rodgers
- Mr John Keeves
- Ms Rachel Webber
- Ms Shannon Finch
- Mr Clint Harding
- Mr Peter Leech
- Mr Chris Pearce
- Ms Lisa Huett

The Section's administration team serves the Section nationally and is part of the Law Council's Secretariat in Canberra.

The Law Council's website is www.lawcouncil.au.

The Section's website is www.lawcouncil.au/business-law.