



25 October 2024

Senator Jess Walsh

Chair
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Senator,

RE: Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024 [provisions]

Endeavour Group Limited (**Endeavour**) welcomes the opportunity to provide feedback to the Senate Standing Committee on Economics on the Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024. Endeavour remains supportive of Treasury's merger reform review and the opportunity to modernise the current regime.

Endeavour has routinely engaged with the Treasury Taskforce over the past twelve months on proposed changes to the regime, supporting mandatory notification from the outset whilst highlighting the need for careful consideration in relation to some of the proposed elements. Collectively we should ensure the regime is fit for purpose for the Australian market and avoid unintended consequences.

Endeavour acknowledges the work the Treasury Taskforce team has undertaken consulting with stakeholders and appreciates the considered and practical changes that have been made along the way in an effort to streamline the merger clearance process. In particular, modifying the proposed extended definition of substantial lessening of competition (SLC) so that it only applies to merger provisions and recognising that SLC **may** arise from an entrenchment of market power but that it is **not** to be presumptive (and therefore not intended to change the scope of SLC). We also note the discretion provided to the Tribunal to permit parties to provide new information relevant to the ACCC determination if they were not given reasonable opportunity to make submissions during the ACCC review.

As you may be aware, Endeavour's operations consist of liquor retail, hospitality and our Paragon Estates wine portfolio, employing over 30,000 team members across every State and Territory. Endeavour demerged from Woolworths Group Limited in June 2021 and was subsequently independently listed on the ASX.

Endeavour has been engaging constructively with the ACCC on both hotel and bottleshop acquisitions (with acquisition value ranging from \$900K to \$20M) and has been voluntarily submitting and adhering to an informal mandatory notification process over the past 18 months. As such, Endeavour has



considerable experience in participating in the merger and acquisition process and learnings from its engagement with the ACCC.

We have reviewed the Bill and would like to put forward **3 recommendations** to support the implementation and success of a stronger, streamlined, efficient and effective merger regime.

1. Clarity on upfront information requirements.

Intrinsically linked to timeframes is ensuring upfront information requirements are clear, well defined and adhered to. If this is achieved it will reduce the need for subsequent information requests as it will ensure that information provided is relevant, complete and alleviate any concerns (should they exist) that parties are deliberately withholding information or providing inaccurate information. In turn it will help with adherence to time frames, ultimately ensuring an efficient process for the ACCC and greater certainty for businesses.

2. Greater onus and accountability on the ACCC to commit to timeframes.

The merger review process (including timelines) needs to be one of clarity and certainty to enable competitive and informed investment/commercial decisions. We remain concerned that the statutory timelines, as currently detailed in the Bill, provide the ACCC with unnecessarily broad discretion to delay, extend, pause or restart the assessment process so that it will be inevitable these timelines are regularly pushed out. Whilst we acknowledge the ACCC needs to be afforded sufficient time to review (and for merger parties to submit all relevant information), merger parties should also be afforded a realistic timeframe to respond to ACCC information requests.

It is concerning that the Bill currently stipulates an extremely short and unrealistic timeframe (10 days) for merger parties to respond to all information requests. From experience, s155 Notices are often extremely broad reaching (and in our experience have been issued despite having agreed with the ACCC what upfront information they expect in submissions). Such requests are incredibly resource intensive in terms of identifying, reviewing and compiling responses and required documentation. Timeframes need to be realistic to allow proper process and to avoid merger parties being ultimately forced into "pausing the clock".

3. Defined parameters on the elements the twelve month review will consider.

The twelve month review will be important for both the ACCC and business to assess the practical application of the new regime, and to ensure adequate resources are allocated to identify areas that are challenging for both the regulator and business to work through under the new system. We note the Government has indicated that the notification thresholds will be reviewed after twelve months, however, we consider the review should also explicitly capture the following:

- a. The success or failures of the statutory timeframes including in relation to adherence without extension, where the ACCC has extended the timeframes and/or where parties have been required to extend the timeframe (including insights as to whether that was triggered due to ACCC s155 information requests). This should also capture periods

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where the ACCC has suspended, or not formally commenced, the review process due to a perceived lack of information;

- b. A review of the proposed upfront information requirements (and pre-consultation process and timeframes) for merger parties - to ensure that the information requests and requirements are relevant to the applicable transaction which in turn should result in an efficient review process for the ACCC; and
- c. Further consultation on any additional or new changes that may be required following the learnings from the first 12 months of the new process.

The above would provide greater understanding as to the impact of the changes.

We're grateful for your consideration of our recommendations and would welcome an opportunity to discuss any aspect of this submission further with you, at a time that is convenient to you.

Yours sincerely

Dan Holland

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Peter Atkin

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