

Reply to the Attention of A. Neil Campbell
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Our File No. 69459
Date June 10, 2014

VIA www.competitionpolicyreview.gov.au/submissions and COURIER

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir or Madam:

Re: Competition Policy Review

We write on behalf of the Merger Streamlining Group (the “Group”), whose membership consists of multinational firms with a common interest in promoting the efficient and effective review of international merger transactions.¹ The cornerstone of the Group’s activity has been to work with competition agencies and governments to help implement international best practices in merger control, with a particular focus on the *Recommended Practices for Merger Notification Procedures* (“Recommended Practices”) of the International Competition Network (“ICN”),² of which Australia’s Competition and Consumer Commission (“ACCC”) is an active member.

The Group’s work projects to date have included two major surveys on compliance with the *Recommended Practices*, as well as submissions to the European Commission, the U.S. Antitrust Modernization Commission, and to competition agencies in twenty other jurisdictions (including Russia, India, China, Japan, Chile, Peru, the United Kingdom, Italy, Portugal, and Spain) to promote reforms consistent with the *Recommended Practices*. The Group also provided submissions to the ACCC in the summer of 2013 in connection with the draft Merger Review Process Guidelines being proposed at that time.

¹ The current members of the MSG include BHP Billiton, Bombardier, Chevron, Danaher, GE, Novartis, Oracle, Procter & Gamble, SAB Miller, Siemens, and United Technologies.

² International Competition Network, *Recommended Practices for Merger Notification Procedures*, available online at <<http://www.internationalcompetitionnetwork.org/uploads/library/doc588.pdf>>.

The Group commends Australia's continuing efforts to update its competition regime and increase efficiency in the market. The Group appreciates the opportunity to provide this letter in a spirit of constructive engagement, based on its members' very substantial experience in completing multinational merger transactions.

The Group is encouraged by the recognition in the Issues Paper that it is important to consider:

*whether competition regulations, enforcement arrangements and appeal mechanisms are in line with international best practices and[] foster a productive and cost-minimising interface between the Australian Competition and Consumer Commission (ACCC) and Industry (through applications for immunity or merger clearances) that is simple, effective and well designed.*³

One of the central tenets of the ICN *Recommended Practices* is to avoid “*impos[ing] unnecessary transaction costs and commitment of competition agency resources without any corresponding enforcement benefit.*”⁴

The Group believes that there are substantial benefits to preserving Australia's existing voluntary merger notification system. The vast majority of mergers notified under mandatory notification regimes, even with well-designed notification thresholds, do not raise competition concerns. A voluntary notification regime relieves parties to non-problematic mergers from the time and cost burdens of unnecessary filings. Equally important, it allows competition agencies to focus their resources on those transactions (as well as cartel and other anti-competitive activities) that raise genuine competition concerns, rather than reviewing an assortment of transactions which do not.

Of note, the United Kingdom conducted a study⁵ several years ago of its voluntary merger notification regime and chose not to adopt mandatory merger control. In reaching that conclusion, the U.K. government stated that “*mandatory notification would increase costs to both business and the [competition agency]*” and recognized “*problems in setting effective thresholds and [the] difficulties of full mandatory notification.*”⁶

The Group strongly encourages the retention of Australia's existing voluntary merger notification regime. Maintaining a voluntary system will serve the goals of Australia's reform efforts by furthering the ability of the ACCC to devote personnel and resources to high

³ See Australia, Issues Paper, “Competition Policy Review” (14 April 2014) at sections 3.4 and 3.4.1.

⁴ See *Recommended Practice* I.B, Comment 1; see also III.B, Comment 2; V.B, Comment 1; VI.E, Comment 1; XIII.B, Comment 1.

⁵ See United Kingdom, Department for Business Innovation & Skills, “Growth, Competition and the Competition Regime: Government Response to Consultation” (March 2012) at section 5.8.

⁶ *Ibid.*

impact transactions and limiting the burdens imposed on businesses and inefficiencies created in the market.

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Thank you very much for considering the Group's views. We would be pleased to discuss this submission with you or your colleagues further, at your convenience.

Yours very truly,



A. Neil Campbell



Casey W. Halladay

Copy to: Members of the Merger Streamlining Group