

31 July 2024

Australian Competition and Consumer Commission (ACCC)  
[exemptions@accc.gov.au](mailto:exemptions@accc.gov.au)

Dear Sir/Madam,

### Sustainability collaborations and Australian competition law

On behalf of the Australian Council of Superannuation Investors (ACSI), thank you for the opportunity to provide feedback on the draft guidance on *Sustainability collaborations and Australian competition law* (the draft guidance).

#### About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members are Australian and international asset owners and institutional investors with over AU\$1.9 trillion in funds under management.

Through research, engagement, advocacy and voting recommendations, ACSI supports members in managing ESG investment risk and exercising active ownership to strengthen investment outcomes. Active ownership, including the management of climate related risk, allows institutional investors to enhance the long-term value of retirement savings entrusted to them to manage.

ACSI provides research on, and engages with, listed companies in relation to financially material ESG issues. ACSI members each take their own approach to investing, and investment strategy is not discussed through ACSI.

ACSI provides voting recommendations to members who subscribe for the service. ACSI's members do not collectively determine their voting positions through ACSI, and voting recommendations act as only one input into subscribers' decision making on how they exercise their voting rights. In relation to contentious resolutions, practice shows that ACSI members vote differently on many occasions.

#### ACSI's position

ACSI welcomes the draft guidance, which provides useful information for both investors and companies who may seek to collaborate on sustainability initiatives. In our view, collaboration between businesses should play an important role in addressing systemic risks across the Australian economy. For instance, collaborative efforts are supporting the economy-wide transition to net zero and will contribute to effective responses to modern slavery in supply chains.

As noted in the footnote on page three, the draft guidance focuses specifically on environmental sustainability however the principles discussed may apply to collaboration in support of other sustainability objectives. The draft guidance would benefit from more prominently highlighting its relevance to broader sustainability considerations, including, for example collaborations with social objectives and collaborations which promote good corporate governance. For example, there may be circumstances where industry collaboration is appropriate to address modern slavery or to consider the rights of First Nations groups.

## *Sustainability collaborations and Australian competition law*

We support this section of the draft guidance, which provides a useful overview of circumstances where sustainability collaborations may be unlawful. This summary indicates that collaboration between ACSI and our members is consistent with competition law obligations. ACSI complies with legal requirements regarding collaboration, including under the *Corporations Act 2001* and the *Competition and Consumer Act 2010*.

In this section of the draft guidance, there is scope to further emphasise the principle that many collaborative sustainability initiatives will not raise competition concerns. This could address uncertainty or apprehension around the operation of competition law in this context, ultimately supporting collaboration which is in the public interest. More specifically, the section on cartel conduct could elaborate on the factors that would indicate that a sustainability collaboration is less likely to be a cartel, including where businesses independently come to similar conclusions, using the same (or similar) data or policy signals (for example, as outlined on page 11 in case study 4 of the draft guidance).

The draft guidance would also benefit from further discussion on the competition law implications of collaboration regarding the collation of sustainability information about entities in supply chains or investment portfolios. Collaboration in this context is likely an efficient approach (for both businesses and investors) to better understanding risks, data collection and meeting disclosure obligations, including, for example, those included in the *Modern Slavery Act 2018* and upcoming climate-related financial disclosure requirements.

### *Authorisation*

While ACSI has not identified a need to engage with the ACCC authorisation process, we welcome the focus on sustainability benefits which can help address systemic risks. We expect that the draft guidance will provide companies with more confidence that the ACCC will constructively consider sustainability benefits when assessing the net public benefit of a potential authorisation.

In principle, ACSI is supportive of collaboration between Australian companies to tackle sustainability challenges. As identified in the draft guidance, collaboration may mitigate market failures which constrain business responses to issues impacting the broader community or the environment. However, it is appropriate that benefits of collaborative initiatives are balanced against competition considerations.

In practice, ACSI has supported sustainability collaboration between Australian companies. For example, ACSI engaged with Coles and Woolworths in 2022 to encourage a collaborative response to the collapse of the REDcycle soft plastics recycling program. Given the significant investment and coordination necessary to address this challenge, we believe that collaboration is in the public interest. ACSI will continue to support sustainability collaborations on a case-by-case basis, where they address system-wide risks and it is in the long-term financial interests of investors. We recommend that the authorisation function is appropriately resourced, so as to provide Australian businesses with timely and consistent information and responses.

I trust our comments are of assistance. Please contact me or Kate Griffiths, Executive Manager – Policy and Research ([kgriffiths@acsi.org.au](mailto:kgriffiths@acsi.org.au)), should you require any further information.

Yours faithfully

Louise Davidson AM  
Chief Executive Officer  
Australian Council of Superannuation Investors