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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Competition in the Circular Economy – Note by Australia**

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This document reproduces a written contribution from Australia submitted for Item 7 of the 140th OECD Competition Committee meeting on 14-16 June 2023.

More documents related to this discussion can be found at  
<https://www.oecd.org/competition/competition-in-the-circular-economy.htm>

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## Australia

1. This paper adopts the Ellen MacArthur Foundation definition of the circular economy, namely “a systemic approach to economic development designed to benefit businesses, society, and the environment. In contrast to the ‘take-make-waste’ linear model, a circular economy is regenerative by design and aims to gradually decouple growth from the consumption of finite resources [...]. It is based on three principles: design out waste and pollution, keep products and materials in use and regenerate natural systems”<sup>1</sup>.

2. A transition to a circular economy is important in supporting Australia’s progress towards net zero emission by 2050. According to *Ganbatte World*, globally, 70% of greenhouse gas emissions are associated with material handling and use. Without changes in the approach to making and using products, materials and food, more sustainable energy use alone will not be sufficient to reduce greenhouse gas emissions. By eliminating waste and pollution, circulating products and materials and regenerating nature, a circular economy could reduce global material use by 28% and reduce greenhouse gas emissions by 39%.<sup>2</sup>

3. The Australian Government has identified a quick and efficient move to the circular economy as one of its priorities.<sup>3</sup> In February 2023, the Circular Economy Ministerial Advisory Group was appointed to provide advice to the government on the opportunities and challenges associated with a transition to a circular economy by 2030. Australia’s transition to a circular economy includes targets to achieve an 80% recovery rate of waste, and halving food waste by 2030.<sup>4</sup>

### 1. Competition and the circular economy in Australia

4. Broadly speaking the goals of competition law and the conceptual foundations of the circular economy are not inconsistent. The circular economy is not at odds with the market economy, and competition underpins the market economy. Without effective competition, there are reduced incentives for business to operate efficiently and allocate scarce resources to their most productive use, or respond to consumer preferences for circular goods and services.

5. What differs in a circular economy is that recognition of the social cost of waste, pollution and degradation can lead to pursuit of a socially optimal equilibrium which is generally characterised by a lower quantity and higher price compared with market equilibrium in a linear economy. Collaboration may be required to achieve such circular

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<sup>1</sup> Ellen MacArthur Foundation, [The Circular Economy in Detail Report](#), accessed 7 April 2023.

<sup>2</sup> Ganbatte, [Become a climate resilient city through the circular economy](#), Ganbatte website, 2023, accessed 7 April 2023.

<sup>3</sup> Department of Climate Change, Energy, the Environment and Water (DCCEEW), [Expert group guiding Australia to a circular economy](#), [media release], DCCEEW, 1 February 2023 accessed 7 April 2023.

<sup>4</sup> The Australian Trade and Investment Commission (Austrade), [Circular economy](#), Global Australia website, 2022, accessed 6 April 2023.

economy goals - but in some cases, may be considered anticompetitive under Australian's competition law.

6. The CCA provides a number of levers for regulating competition in markets in Australia. This includes provisions relating to:

- Merger and acquisitions
- Anticompetitive agreements (including cartels) (and associated immunity policies)
- Unilateral misuse of market power
- Authorisations and exemptions
- Consumer protection and fair trading.

7. This paper includes examples of where the ACCC's cartel enforcement, educative measures, authorisation regime, and consumer protection role have touched on the circular economy in Australia.

8. Other examples having a circular economy nexus not included in this paper relate to exemptions (under s51(1) of the CCA), economic regulation, certification trademarks, and product safety.

## 2. The ACCC's 2023-2024 Compliance and Enforcement Priorities

9. The ACCC focuses on taking action that most promotes the proper functioning of Australian markets, protects competition, improves consumer welfare and stops conduct that is anti-competitive or harmful to consumers.

10. As the transition to a more circular economy creates opportunities and incentives for anticompetitive conduct, the ACCC's compliance and enforcement tools are increasingly being deployed in relation to industries with a circular economy nexus. To date this has been ad hoc, however the ACCC is taking an increasingly strategic approach to its competition compliance and enforcement work relating to sustainability with the introduction of the new priority in this area for 2023-24. As such it is expected that the ACCC's work in this arena will move to a more proactive, strategic approach.

11. Competition agencies need to view with healthy scepticism claims that competition laws are a roadblock to their participation in a circular economy. A proactive detection and enforcement program coupled with robust penalties can deter anticompetitive conduct which could undermine healthy competition in markets supporting the circular economy.

12. The ACCC is proactively monitoring for anticompetitive agreements with a sustainability nexus, which extends to circular economy matters. The ACCC has received reports of agreements among competitors that have a sustainability objective, but are problematic under the CCA. We apply a proportionate response to such reports, and in one recent case issued an educative letter alerting parties to a planned sustainability agreement of their obligations under competition law.

13. Community education and outreach is a cornerstone of the ACCC's strategy to raise awareness of the seriousness and criminality of cartel conduct and its cost to businesses, consumers, and the economy. However, where an anticompetitive or cartel agreement has a significant impact on competition in markets we will respond with enforcement measures to punish and deter.

14. In the following case study, while there was not an explicit circular economy objective, it is an example of cartel enforcement supporting healthy competition in a significant market impacting Australia's circular economy.

### Box 1. Demolition waste cartel

A key sector for Australia's circular economy is the built environment. The ACCC has investigated suspected cartel conduct in the demolition waste sector, which facilitates circularity in the built environment.

The firms involved were a waste management company that provides landfill, waste processing and skip bins services throughout Australia's most densely populated states - New South Wales, Victoria and Queensland, and competitors operating waste management businesses that supply skip bins and waste processing services for building and demolition waste respectively in Sydney, New South Wales.

The ACCC's investigation uncovered evidence of cartel conduct including allegations that in mid-2019, waste company Bingo Industries agreed with its competitors Aussie Skips Bin Services and Aussie Skips Recycling, to fix and increase prices for the supply of skip bins and the provision of waste processing services for building and demolition waste in Sydney.

The ACCC referred this matter to the Commonwealth Director of Public Prosecutions for possible prosecution under the criminal cartel provisions of the CCA.

The CDPP pursued a criminal prosecution. On 16 August 2022, Bingo Industries entered pleas of guilty to criminal cartel offences relating to price fixing for demolition waste services in Sydney. Bingo's former managing director and CEO, Daniel Tartak was also charged with two criminal cartel offences for aiding and abetting Bingo's alleged cartel conduct, and on 20 October 2022 entered pleas of guilty in relation to those offences.

On 19 December 2022, waste companies Aussie Skips Recycling and Aussie Skips Bin Services (together Aussie Skips) were each charged with a criminal cartel offence. Aussie Skips' chief executive Emmanuel Roussakis was also charged with one criminal cartel offence for his involvement in the alleged conduct. Aussie Skips and Mr Roussakis have since pleaded guilty.

The sentencing hearing for Bingo and Mr Tartak was held on 9 March 2023, with judgment reserved. The sentencing hearing for Aussie Skips and Mr Roussakis is scheduled for 22 and 23 May 2023.

### 3. Australia's authorisation regime

15. The ACCC recognises in certain circumstances, collaboration may be an appropriate pathway for industries looking to achieve significant environmental and economic benefits for the community, including through circular economy initiatives.

16. In Australia, the authorisation process, further explained below, allows the ACCC to take into account environmental and sustainability benefits that flow from business or industry collaboration to support a transition to a circular economy.

17. The ACCC may grant authorisation, which provides businesses with an exemption from the competition provisions in the *Competition and Consumer Act 2010* (CCA) for arrangements that may otherwise risk breaching those provisions, but are not harmful to competition and/or are likely to result in a net public benefit.

18. However, in assessing applications for authorisation, the ACCC will expect businesses to substantiate their environmental and sustainability claims, which the ACCC will test publicly. The ACCC will not grant authorisation to what would amount to ‘greenwashing cartels’ which do not achieve meaningful environmental benefits. Greenwashing cartels risk misleading consumers and can hinder and distort the development of emerging markets.

19. The authorisation process minimises conflict between the goals of competition law and the conceptual foundations of the circular economy. While there are instances where companies seek to collaborate in ways that raise cartel/competition risks, the ACCC’s ability to take environmental benefits into account as part of the ‘net public benefit’ authorisation test means the ACCC is well placed to consider proposals by business and to work together to achieve sustainability goals, including those specifically in the circular economy.

### 3.1. Authorisation process

20. The authorisation process is transparent and public. Applications for authorisation are published online on the authorisations public register.<sup>5</sup> Consultations with interested parties assist in informing the ACCC’s assessment of the likely public benefits and detriments of the proposed conduct. This includes engagement with relevant Government departments, industry bodies and consumer groups, which allows the ACCC to test propositions made in support of the application.

21. Typically, the ACCC grants an authorisation for a limited period of time and the duration of an authorisation is considered on a case-by-case basis.<sup>6</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also allows the ACCC to review the authorisation and the public benefits and detriments that have resulted, following a set period of time. Most authorisations are granted for periods of up to five years, although the ACCC has granted authorisation for longer periods (for example 20 years) when supported by the facts.

22. The ACCC may grant authorisation subject to conditions or dismiss the application for authorisation. Before it issues its final determination, the ACCC will issue a draft determination to enable stakeholder feedback.

### 3.2. Authorisation test

23. The ACCC has discretion to grant authorisation but must not do so unless it is satisfied that the public benefit arising from the arrangements or conduct outweighs the likely public detriment and therefore results in a net public benefit.<sup>7</sup> In some cases, it is also open to the ACCC to grant authorisation where the proposed conduct would not be likely to substantially lessen competition.

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<sup>5</sup> ACCC, [Authorisations Register](#), ACCC website, 2023, accessed 13 March 2023.

<sup>6</sup> CCA, subsection 91(1).

<sup>7</sup> *Competition and Consumer Act 2010* (CCA), subsection 90(7) and 90(8).

24. The Act does not define what constitutes a public benefit. However, the ACCC adopts a broad approach to this concept. This is consistent with the statement from the Australian Competition Tribunal (the Tribunal), which has the power to review ACCC authorisation decisions, that in considering public benefits:

*“[W]e should not wish to rule out of consideration any argument coming within the wildest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress. Plainly the assessment of efficiency and progress must be from the perspective of society as a whole: the best use of society’s resources... efficiency is said to encompass allocative efficiency, production efficiency and dynamic efficiency.”*<sup>8</sup>

25. Therefore, when considering whether there is a public benefit from proposed conduct, the ACCC considers whether benefits are of value to the community generally and, if so, how much weight society attaches to those benefits. The ACCC will give more weight to benefits which flow through to the broader community and are sustained over time.

26. The Act also does not define public detriments. They are described by the Tribunal as “...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency (...).”<sup>9</sup> Consistent with this, the ACCC has also traditionally given this concept a broad meaning. Accordingly, all public detriments likely to arise from the proposed conduct can be taken into account. A lessening of competition does not have to be substantial to comprise a detriment to the public.

27. In weighing benefits and detriments, the ACCC places less weight on those that are less likely to occur, those for which the evidence is less strong, and those which may not be realised for some time. If market conditions are too uncertain for the ACCC to be satisfied that the proposed conduct would be likely to continue to generate a net public benefit over a longer term, a short authorisation might be appropriate.

### 3.3. Guidance

28. Further information about the exemption process is available in the ACCC’s Guidelines for Authorisation of Conduct.<sup>10</sup> In Australia the private sector is rapidly pursuing market-based solutions to addressing climate change and the circular economy. As such, the ACCC intends to issue guidance to assist businesses with understanding competition issues that may arise when collaborating to achieve environmental outcomes and information on lodging applications for authorisation. The ACCC’s approach will be informed through monitoring international developments due to the efficiency and international regulatory coherence this can deliver.

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<sup>8</sup> Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

<sup>9</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

<sup>10</sup> ACCC, [Guidelines for Authorisation of conduct \(non-merger\)](#), ACCC, 22 December 2022, accessed 13 March 2023.



### 3.4. Case experience

29. Directly related to the circular economy, the ACCC has already granted several authorisations in relation to stewardship schemes, including authorisations regarding batteries, mattresses, agricultural and veterinary chemical containers and tyres.<sup>11</sup> Typically, stewardship schemes involve an industry levy to fund the appropriate and safe collection, sorting, disposal, or recycling of used and unused products. Under such schemes, companies have sought to enhance the circularity of their industries and coordinate the disposal of the products across the supply chain. The ACCC has also granted authorisations in matters regarding joint tendering arrangements involving the purchase or supply of renewable energy<sup>12</sup> or the purchase by local councils of waste management services.<sup>13</sup> Collective purchasing arrangements and product stewardship account for most sustainability-related authorisation applications to the ACCC.

30. Recently, the ACCC issued a draft determination proposing to grant authorisation (with reporting conditions) to allow supermarket retailers to quickly develop a short-term solution to address the effects of the suspension of the only return-to-store soft plastics recovery program in Australia. The suspension of this program removed the only established and widespread soft plastics recycling pathway for Australian consumers and raised significant concerns about existing soft plastics stockpiles. The ACCC expects to issue a final determination in relation to this matter shortly.

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<sup>11</sup> ACCC, [‘Battery Stewardship’](#), *Authorisations register*, ACCC website, 4 September 2020, accessed 18 April 2023; ACCC, [‘Australian Bedding Stewardship Council’](#), *Authorisations register*, ACCC website, 26 October 2022, accessed 18 April 2023; ACCC, [‘AgStewardship Australia Limited’](#), *Authorisations register*, ACCC website, 21 August 2018, accessed 10 April 2023; ACCC, [‘Tyre Stewardship Australia Limited’](#), *Authorisations register*, ACCC website, 24 May 2018, accessed 10 April 2023.

<sup>12</sup> ACCC, [‘Equinix \(Australia\) Enterprises Pty Ltd Ors’](#), *Authorisations register*, ACCC website, 11 August 2021, accessed 14 April 2023; ACCC, [‘Barwon Water & Ors’](#), *Authorisations register*, ACCC website, 26 August 2021, accessed 14 April 2023; ACCC, [‘Western Australia Local Government Association \(WALGA\)’](#), *Authorisations register*, ACCC website, 26 August 2021, accessed 14 April 2023; ACCC, [‘Macquarie Corporate Holdings Pty Limited Ors’](#), *Authorisations register*, ACCC website, 26 August 2021, accessed 14 April 2023; ACCC, [‘LGA Procurement & Ors’](#), *Authorisations register*, ACCC website, 30 September 2022, accessed 14 April 2023; ACCC, [‘Business Renewables Buying Group’](#), *Authorisations register*, ACCC website, 29 March 2023, accessed 14 April 2023.

<sup>13</sup> ACCC, [‘Sydney Councils’](#), *Authorisations register*, ACCC website, 14 October 2005 accessed 12 April 2023; ACCC, [‘Council Solutions & Ors \(collection\)’](#), *Authorisations register*, ACCC website, 12 October 2018, accessed 12 April 2023; ACCC, [‘Central Highlands Regional Council & Isaac Regional Council’](#), *Authorisations register*, ACCC website, 31 January 2019, accessed 12 April 2023; ACCC, [‘Surf Coast Shire Council & Ors’](#), *Authorisations register*, ACCC website, 10 November 2021, accessed 12 April 2023; ACCC, [‘Metropolitan Waste and Resource Recovery Group \(Organic\)’](#), *Authorisations register*, ACCC website, 25 February 2021, accessed 14 April 2023; ACCC, [‘Metropolitan Waste and Resource Recovery Group \(Recycling Sorting\)’](#), *Authorisations register*, ACCC website, 18 February 2022, accessed 14 April 2023; ACCC, [‘Barwon South West Waste and Resource Recovery Group’](#), *Authorisations register*, ACCC website, 23 March 2022, accessed 14 April 2023; ACCC, [‘Eastern Metropolitan Regional Council & Ors’](#), *Authorisations register*, ACCC website, 27 May 2022, accessed 14 April 2023; ACCC, [‘State of Victoria represented by the Department of Environment, Land, Water and Planning’](#), *Authorisations register*, ACCC website, 30 September 2022, accessed 12 April 2023; ACCC, [‘Bayside Council and Georges River Council’](#), *Authorisations register*, ACCC website, 29 March 2023, accessed 14 April 2023.

31. In assessing authorisation applications with elements specific to the circular economy, the ACCC has considered the effects of proposed conduct on competition at various stages of supply chains, such as import, wholesale, retail and the collection, sorting and processing at the end-of-life stage of products. Scale of operations may also be a relevant consideration in the ACCC's assessment of such matters. For example, in local council joint tendering arrangements for waste and recycling services, increasing volumes may enable new entry for a service provider, lower costs or economic efficiencies. In developing markets, government regulation might also be a relevant factor.

32. Price effects have also been taken into consideration in certain matters. For example, in 2018, the ACCC granted re-authorisation to enable the collection and disposal of used containers for crop production and veterinary chemicals through a stewardship scheme.<sup>14</sup> The ACCC considered that a proposed increase to the levy to reflect the costs associated with the scheme could more accurately reflect the costs associated with responsible disposal and recycling, and that the conduct was likely to continue to increase the safe disposal of hazardous chemicals and containers.

33. Boxes 2 and 3 provide examples of recent authorisations by the ACCC with relevance to the circular economy.

### Box 2. Waste and resource recovery

In February 2022, the ACCC granted authorisation to a group including 27 metropolitan Melbourne councils and 8 regional Victorian councils to conduct a collaborative tender process to procure sorting services for commingled household recyclable waste collected from residents' kerbsides. Without authorisation for joint tendering and contract management, it was likely that each council would individually procure recycling sorting services.

The ACCC accepted that a number of public benefits were likely to result, including from:

- transaction costs savings, including by reducing or eliminating duplication of administrative, legal and contract evaluation costs associated with each council conducting separate tenders, and from the reduced administrative burden of the potential suppliers of sorting services in dealing with the procurement processes of multiple councils
- increased efficiencies from aggregating the recyclable waste volumes which enables suppliers of recycling sorting services to achieve a more efficient scale of operation and facilitates lower average costs for the councils
- increased competition between providers of sorting services as the combined volume of recyclable waste would attract new suppliers to enter the market and offer innovative approaches and would encourage existing suppliers to improve their facilities to meet councils' needs for more effective / higher quality sorting services
- environmental benefits arising from higher quality and greater variety of sorted recyclable materials, increase in recycling and the resource recovery rate, more

<sup>14</sup> ACCC, '[AgStewardship Australia Limited](#)', *Authorisations register*, ACCC website, 21 August 2018, accessed 10 April 2023.



diversion of recyclable waste from landfill and a decrease in stockpiling of low-quality recyclables.

The ACCC considered that the public detriments were limited because:

- the tender process would be competitive and transparent
- the majority of existing and potential suppliers of sorting services operate either nationally or internationally
- participation in the procurement would be voluntary for councils and if a council wished to run its own tender process it was free to do so.

Overall, the ACCC was satisfied that the conduct was likely to result in a public benefit that would outweigh any likely public detriment. The ACCC granted authorisation until November 2029 which included 8 months to conduct the tender process, negotiate contracts and execute contract(s); and 7 years to give effect to the contract(s) for the supply of sorting service.

### Box 3. Business Renewables Buying Group

On 29 March 2023, the ACCC issued a final determination granting authorisation to enable a joint renewable energy buying group (the Group) to conduct a joint procurement and negotiation process for the acquisition of renewable electricity.’

The Group comprises 6 commercial consumers of electricity active in different segments of the economy, including an agricultural organisation specialising in microgreens, an out-of-home care provider, a furniture manufacturer and homewares retailer, an event and exhibition trust, a public university and a non-profit community services organisation.

The Group was formed as part of an initiative by certain Victorian Councils to support Victorian businesses in their transition to 100% renewable energy supply and aims to achieve favourable cost outcomes for them through group electricity buying. Members of the group expressed a desire to operate their businesses with renewable electricity. The joint procurement and contract management process, including the contracting of energy and/or legal advisors, will be administered by an energy consultancy.

The ACCC granted interim authorisation to enable the Group to initiate the joint electricity procurement process, prior to the ACCC’s final determination. The ACCC considered the pooling of the Group’s electricity demand and the joint procurement process was likely to result in public benefits relative to the situation where each organisation individually arranges their transition to renewable electricity, including from:

- transaction cost savings for both the group members and potential retail electricity suppliers arising from a collective negotiation process
- environmental benefits through a greater take-up of renewable energy by group members and the reduction in their respective greenhouse gas emissions
- a potential increased incentive for investment in renewable energy capacity as a result of group members being able to transition to renewable energy at lower

cost and with less risk than if they each sourced renewable energy individually. However, the ACCC considered that these benefits will be small given the group's electricity consumption represents only a small portion of electricity demand.

The ACCC further considered there was likely to be little, if any, public detriment, particularly given that the joint electricity demand of the group is relatively low. The ACCC granted authorisation until 20 April 2034.

#### 4. Greenwashing and competition

34. The rapid change Australia is seeing on environmental issues means that representations around attributes such as 'circularity' are more likely to occur. There is a clear link between consumer law enforcement and competition. Without adequate consumer law enforcement around green-washing, companies will not be able to fairly compete on the basis of environmental credentials as consumers will not trust the representations.

35. As environmental claims become an increasing element in competition between products (i.e. a greater part of the price-quality offer for the consumer (or should it now be the price-quality-social impact offer for the consumer)), for this element of competition to work it is critical that consumers are not misled about environmental, including circular economy, claims.

36. In 2022, the ACCC undertook an internet sweep for greenwashing, and in 2023 greenwashing (including with a circular economy nexus) investigations are being progressed. The ACCC is also progressing compliance activities in this area, including through developing written guidelines for business and consumers.

37. The ACCC's greenwashing sweep and guidance material will set out what the ACCC considers to be best practice when making environmental claims and the steps that businesses can take when advertising and marketing goods or services.

38. In view of the ACCC's 2023-24 compliance and enforcement priority relating to consumer, product safety, fair trading and competition concerns in relation to environmental claims and sustainability, sustainability including circular economy issues will continue to be given weight in applying finite resources to compliance and enforcement.

39. Enforcement action to deter greenwashing should also reduce the number of false, misleading and unreasonable claims in the market. This should give confidence to businesses investing in new circular economy initiatives and ensure related markets are functioning effectively.

#### 5. Establishing the ACCC Sustainability Taskforce

40. The ACCC has followed the lead of counterparts including the United Kingdom Competition and Markets Authority and Dutch Authority for Consumers and Markets by standing up a Sustainability Taskforce to support its sustainability priorities.

41. The Sustainability Taskforce is helping the ACCC to build expertise and inform and coordinate efforts across the agency responding to sustainability developments in the

Australian economy that intersect with the application of competition and consumer law, including product safety.<sup>15</sup>

42. The Taskforce is proactively examining and seeking to influence a range of issues impacting the green transition, such as emissions reduction, biodiversity, material use and energy productivity.

43. Through deepening expertise, and by taking a helicopter view of the ACCC's work across consumer protection and competition law compliance and enforcement, certified trademark assessments and merger review, as well as product safety, the Taskforce is building expertise and a cohesive and consistent approach to sustainability issues at the ACCC.

44. Its activities have included supporting line area work relating to carbon claims, circular economy, engaging with external stakeholders involved in environmental policies and projects that can have an impact on competition and consumer welfare in Australia, as well as deepening our international horizon scanning and engagement – including targeted discussions with counterpart sustainability teams at international agencies.

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<sup>15</sup> G Cass-Gottlieb, [CEDA Speech](#) [transcript], ACCC website, 2023, accessed 19 April 2023.