This thesis contains no material which has been accepted for the award of any other degree or diploma at any university. To the best of my knowledge and belief, this thesis contains no material previously published or written by another person, except where due reference is made in the text of the thesis.

Signature  ___________________________
This thesis is dedicated to the memory of Susan Kaldor, the Academic.
Acknowledgments

Thanks are due to everyone who has taken part in what has been an inspiring year for me.

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Accumulate, Accumulate! That is Moses and the prophets.¹

Introduction and Conceptual Framework
The Political Economy of Australian Merger Law

The relationship between the law and the capitalist mode of production is complex and dialectical. Although the legal system is relatively autonomous from economic processes, it plays a critical role in reproducing the social relations of capitalism. This thesis is principally concerned with one particular aspect of this intricate interface: the law’s role in articulating the dominant economic theories of a capitalist social formation. This specific focus must not be interpreted as an attempt to reduce the law’s position under capitalism to that of a simple mechanism by which economic theory is provided a concrete existence. Nonetheless, the comprehensive function of the law in capitalist social formations is necessarily implicit in the conceptual framework of this thesis. The immediate aim of the work is to critically evaluate the way in which contradictions of economic theory are expressed by the law. Specifically, I explore the relationship between Australian merger law and a pervasive tension in mainstream economic theory: the conflict between the structure of competition and the process of accumulation.¹ In order to establish this contradiction, it is first necessary to construct the conceptual framework through which capitalist accumulation is understood in this thesis.

Accumulation, Concentration and Centralisation

In their seminal contribution to Marxian political economy, *Monopoly Capital*, Baran and Sweezy declared:

> Today the typical economic unit in the capitalist world is not the small firm producing a negligible fraction of a homogeneous output for an anonymous market but a large-scale enterprise producing a significant share of the output of an industry, or even several industries.²

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¹ I recognise the ambiguities in the term “mainstream”. Throughout the thesis, the term will be used as a broad classification for economic theory that has developed from the neoclassical tradition. Crucially, the term is only ever used in relation to economic theory, as distinct from a legal mainstream. For a clear account of the central tenets of neoclassical economic theory, see Christian Arnspenger and Yanis Varoufakis (2006) “What is Neoclassical Economics?”, *Post-Autistic Economics Review*, 38, 2-12.
Although this thesis sits outside the neo-Marxian theoretical framework, it accepts this empirical observation. Indeed, the statement has become even more pertinent in the 43 years since Monopoly Capital was first published. Yet, too often, insufficient attention has been devoted to explaining how and why capital grows large. This charge can be leveled against both neoclassical and neo-Marxian economics. The former presents an ahistorical model of pure exchange and is therefore unable to explain the persistent growth of capital over time, while Baran and Sweezy simply assume the prevalence of monopoly capital as their theoretical starting point. By contrast, since merger law directly concerns the expansion of individual capitals, this thesis is immediately forced to construct a framework for understanding the growth of capital in the process of accumulation.

Accumulation is the process by which surplus is reinvested as capital, thereby leading to an expansion of total social capital. This expansion can happen through either an increase in the amount of individual capitals, or an increase in their magnitude. The latter process is termed concentration in the Marxian framework. Concentration is the dominant process underpinning capitalist accumulation, since the force that compels total social capital to expand – the law of value – is exerted on each individual capital. Thus, the process of concentration is inherent in the process of capitalist accumulation. On this point, Marx was explicit: “the growth of social capital is effected by the growth of many individual capitals.”

By contrast, centralisation – the redistribution of existing capital into fewer independent capitals – is often presented as an entirely separate process to both accumulation and concentration. This thesis contends that centralisation is simply a specific expression of the way in which the law of value compels individual capitals to expand, and is therefore

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3 In this thesis, “neo-Marxian” will be used to describe those theorists who contend that Marx’s Capital must be modified in order to the theorise capitalism in its monopoly stage. This school of thought is commonly associated with the Monthly Review periodical, and in particular, Baran, Foster, Magdoff and Sweezy. It also includes, inter alia, Kalecki, Steindl and Sylos-Labini. The neo-Marxian theoretical contribution will be defined generally as the “theory of monopoly capitalism”.


inseparable from the process of concentration. Indeed, Marx defined centralisation as the “concentration of capitals already formed” (emphasis added).  

The fact that value expands in the production process is not, in itself, the reason why capital concentrates. Under capitalism, the law of value drives each individual capitalist to plough the surplus value appropriated from labour back into the production process. It is only by reinvesting that the capitalist is able to keep pace with the technological advancements of other capitalists, and thereby continue to appropriate surplus value. From the perspective of the capitalist, this process of reinvestment will ideally enable her to appropriate an even greater amount of surplus-value through an expanded scale of production. This expansion is achieved generally through concentration, but most effectively through centralisation. As Marx explained:

> The gradual increase of capital by reproduction…is clearly a very slow procedure compared with centralisation…The world would still be without railways if it had to wait until accumulation had got a few individual capitalists far enough to be adequate for the construction of railways. Centralisation, on the contrary, accomplished this in the twinkling of an eye.  

So, while centralisation is “distinct from accumulation and concentration”, all three processes are mutually constituted, and propelled by the law of value. Furthermore, even though “centralisation does not in any way depend upon a positive growth in the magnitude of social capital” in a strict sense, the growth of social capital (accumulation) and the redistribution of individual capitals (centralisation) are both driven by the process of concentration. Finally, since centralisation inevitably leads to an increased scale of production, the centralisation of capital will generally be reflected by an increase in total social capital (see Figure A for a diagramatic representation of this discussion). Having demonstrated that concentration and centralisation are processes inherent in accumulation, it is now possible to identify a fundamental contradiction of mainstream theory that is articulated by merger law.

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6 Ibid.
7 Ibid., p588.
8 Ibid., p586.
9 Ibid., p587.
The Contradiction of Concentration

On one side sits perfect competition, the “central theoretical element” of mainstream economics. The perfectly competitive market is populated by a large number of atomistic firms who passively accept the market price as determined by the dual forces of supply and demand. Although it is widely acknowledged that perfect competition exists purely in the abstract, mainstream economists cling to the concept as a “benchmark” for real markets. By definition, mergers reduce the amount, and increase the size, of firms in an economy, and therefore take markets further from the ideal of perfect competition. In this framework, mergers must consequently be prohibited as a general rule.

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On the other side sits accumulation. Applying the theoretical framework established in the previous section, accumulation entails the persistent growth of capital through the process of concentration. Yet accumulation is ignored in the static model of pure exchange preferred by mainstream economists. Nonetheless, the empirical realities of firm sizes under capitalism have forced mainstream theory to accommodate a particular notion of firm growth – not in the form of an overarching concept of accumulation, but in the simple and well-trodden principles of economies of scale and scope. According to these principles, firm growth is desirable as production becomes more efficient on an increased scale or scope. In this context, mergers are seen as a key mechanism for increasing the productive capacity of firms, and should generally be permitted.

Together, these two elements constitute a fundamental tension in mainstream theory that is highlighted by the process of capitalist mergers. I call this tension the contradiction of concentration. While this contradiction is essentially theoretical, it is provided with a concrete existence by Australian merger law. By examining how Australian merger law articulates the contradiction of concentration, this thesis critically evaluates the conceptual foundations for the regulation of capitalist competition in the Australian social formation.

**Australian Merger Law**

Competition policy is an inherently complex element of political economy as it recognises that extensive government regulation is required to ensure the effective performance of the free market. Merger law is a discrete component of competition policy that regulates the implications of mergers and acquisitions for the competitive process. The central provision of Australian merger law is Section 50 of the *Trade Practices Act 1974* (the “TPA”). Section 50 prohibits mergers that would have the effect, or be likely to have the effect, of substantially lessening competition in a market for goods or services in Australia. Merger law is a useful object of analysis principally

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12 For the remainder of the thesis, unless specified otherwise, the term “concentration” will be used to refer to the dual processes of concentration and centralisation. Although merger law specifically addresses the process of centralisation, the term concentration is preferred as it reaffirms that centralisation is part of the wider process of concentration, and that both processes are inherent in accumulation.

13 The term “mergers” will be used in this thesis to refer to both mergers and acquisitions. Although the term merger implies a degree of mutual consent between parties to a transaction, the terms are virtually interchangeable in practice. Similarly, the term “take-overs” is effectively synonymous with mergers.
because it facilitates an evaluation of a fundamental contradiction in mainstream economic theory – as well as an examination of the law’s role in capitalist social formations. In addition, three specific characteristics make Australian merger law an intriguing object of analysis.

Firstly, merger law is unique. While all of the other trade practices proscribed by the TPA relate to specific and identifiable types of conduct, merger law regulates market structures. There are two common justifications for structural regulation. On one hand, if certain market structures can be classified as universally good or bad for competition, merger law should aim to (re)produce the best possible structures. Yet, past the ideal types of perfect competition and pure monopoly, there is no such consensus on the virtues of different market structures. Indeed, there are “almost as many models of oligopoly as there are oligopolistic markets”. On the other hand, certain market structures may be more likely to foster the types of conduct prohibited by other provisions of the TPA. In this context, merger law is justified as a preemptive defence against anticompetitive behaviour. This approach is problematic as it seeks to determine illegality before any illegal conduct has actually taken place. The law can only hope to deter anticompetitive conduct, which is precisely the function of the behavioural provisions of the TPA.

Secondly, merger law is imprecise. At each stage of a merger evaluation, enforcement bodies are required to make highly contentious measurements. Even though market definition is the “critical underpinning” of a merger evaluation, the test used by economists and legal practitioners to define markets is accompanied by insurmountable data requirements. Similar problems are encountered when determining market concentration ratios. If it must be considered whether a merger is in the public interest, discretion is necessarily employed in order to measure and compare the different costs and benefits of

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14 Such as price-fixing (Section 45), exclusive dealing (Section 47) and resale price maintenance (Section 48).
the merger.¹⁹ Worse still, these onerous data requirements inevitably lead to a selective application of empirical results in order to bolster theoretical hypotheses.²⁰ Regardless of these prohibitive information requirements, the test in Section 50 can only be applied by comparing future market outcomes with the merger, and without the merger. It is perhaps one of the most basic premises of political economy that economic theory is unable to predict the future, as economic processes are always socially and historically constituted.

Finally, merger law is rarely invoked. Of the 111 mergers reviewed by the Australian Competition and Consumer Commission in 2009, only one was opposed on the grounds of Section 50.²¹

This thesis initiates its substantive analysis by asking why merger law is unique, imprecise and rarely used. The answer – and central contention of the work – is that merger law articulates the contradiction of concentration. Australian merger law is underpinned by a conception of competition as a market structure populated by a sufficiently large number of atomistic firms. Yet capitalist mergers are nothing other than an expression of the way in which the law of value drives capital to expand in the process of accumulation. The tensions in the law that have been explored in this section are generated by this fundamental incongruity in the conceptual foundations of Australian merger law.

Plan for the Work

This thesis presents a critical examination of the contradiction of concentration as expressed by Australian merger law. The work is divided into two parts, each consisting of two chapters. Part One investigates the origins and development of the contradiction of concentration. Chapter 1 contends that the contradiction is only, and always, apparent in structural conceptions of competition – that is, theories of competition in which market structures are analytically central. By exploring the development of structural

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²¹ As at 23 September 2009. This information has been gathered from the ACCC’s *Informal Merger Clearance Register*, at http://www.accc.gov.au/content/index.phtml/itemId/750991#informal. For information on the merger that was opposed, see ACCC (2009) “POTA NSW Pty Ltd Proposed Acquisition of Maritime Container Services Pty Ltd”, available at http://www.accc.gov.au/content/index.phtml/itemId/890083/fromItemId/751043 (accessed 25 September 2009).
conceptions of competition, the chapter demonstrates that such conceptions are a persistent feature of mainstream economic theory. Yet, a conception of competition as a market structure is not specific to the mainstream problematic. Rather, the chapter suggests that the neo-Marxian theoretical framework also employs a structural understanding of competition. In this respect, the chapter does not intend to evaluate the ‘Marxian-ness’ of the theory of monopoly capitalism, but simply to highlight the continuity between the neo-Marxian and mainstream conceptions of competition as a market structure. Finally, the chapter establishes that the conceptual foundations of Australian merger law are consistent with a structural theory of competition, and therefore demonstrates that the contradiction of concentration is apparent in Section 50 of the TPA.

Building from this conclusion, Chapter 2 analyses how the contradiction of concentration has been reproduced and emphasised throughout the historical evolution of Australian merger law. The chapter examines three distinct historical institutions that have been characterised as monopoly: the royal grant of monopoly in sixteenth-century England, the US trust structure common in the late 1800s, and the large corporation of contemporary capitalism. Despite the fundamental differences in the form of these arrangements – as well as their implications for the competitive process – they have all contributed to the position that “monopolies” should be regulated by the law. Yet, unlike the other two arrangements, the large corporation is a direct result of the process of concentration inherent in capitalist accumulation. The chapter demonstrates that the diverse historical influences on Australian merger law have emphasised and entrenched the contradiction of concentration. The chapter then explores how Australian legislation has developed in response to the contradiction, and contends that the authorisation regime of the TPA has emerged as the law’s attempt to mediate the contradiction.

Part Two of the thesis considers whether the contradiction of concentration can be resolved. The focus of Chapter 3 is Australian merger law’s attempt to mediate the contradiction through the authorisation regime and its emphasis on economic efficiency. The chapter suggests that this attempt is unsuccessful, and demonstrates that the contradiction ultimately surfaces in a new form. By employing an ahistorical model of pure exchange, the mainstream economic framework which underpins merger law conceals the significant implications of this process for the antagonistic relationship
between capital and labour. Accordingly, the Marxian categories of capital and labour are located within the mainstream paradigm in order to reveal the important repercussions of the contradiction of concentration on the capital relation. Although the law’s role in reproducing the social relations of capitalism is generally implicit throughout the thesis, the issue comes to the fore in this chapter.

Chapter 3 draws two important conclusions: firstly, the law is unable to resolve the contradiction of concentration while still maintaining a structural conception of competition; and secondly, the mainstream framework is inappropriate for analysing the complex role of the law in reproducing the social relations of capitalism. These results lead directly to the presentation of an alternative problematic in Chapter 4. In this chapter, a theory of competition that is not contingent on an analysis of market structures is constructed from Marx’s method of political economy and theory of accumulation. In this framework, competition is inherent in the nature of capital, and is therefore not contingent on the number of individual capitalists amongst whom total social capital is divided. Accordingly, mergers are an inappropriate focus for capitalist regulation, as they simply modify the ownership of capital, and not its inherent character as self-expanding value. This point is illuminated by examining two controversial aspects of Australian merger law – the issue of creeping acquisitions and the failing firm defence.

Ultimately, this thesis contends that competition policy should not regulate market structures through merger law. However, the work should not be interpreted as lending any support to the hyper-free-market ideology of the Chicago School of economics. Rather, by stepping out of the mainstream problematic, I aim to establish the foundations for a conceptual framework with which political economy can determine when capitalist competition should be regulated, and also identify the “progressive…effects of concentration and centralisation”. In doing so, I hope to extend a tradition of criticism into the realm of economic law, where the hegemony of mainstream economics is perhaps most apparent.

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PART ONE

The Origins and Development of the Contradiction of Concentration
Chapter 1

Structural Theories of Competition

The Conceptual Foundations of Australian Merger Law

One key feature unites mainstream theories of competition from Smith,\(^2\) to Cournot,\(^3\) to Robinson,\(^4\) to Scherer,\(^5\) to Baumol\(^6\) – the analytical centrality of market structures. In this way, mainstream conceptions of competition may be classified as *structural theories of competition*. Although such theories may attempt to present competition as a dynamic process, they are ultimately constrained by the identification of market structures. In these theories, competition is defined and measured by reference to the structural conditions of a market – such as the number and size of independent agents, or the level of barriers to entry and exit. In this framework, the growth of capital necessarily impacts on the state of competition, since any growth will materially change the structural conditions of a market. Crucially, therefore, the contradiction of concentration is only – and always – apparent in structural theories of competition.

In the introduction to this thesis, the contradiction of concentration was presented in its most basic form – as the tension between the *structure* of (perfect) competition and the *process* of capitalist accumulation. Yet perfect competition is generally understood as an abstraction or an ideal type rather than a policy goal, and few theorists believe that a perfectly competitive market is attainable in reality. Equally, most economists have acknowledged the clear pattern of firm growth under capitalism, if only empirically.

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4. See Joan Robinson (1933) *The Economics of Imperfect Competition*, London: Macmillan.
Consequently, the contradiction of concentration rarely appears in this simplistic form. The overarching purpose of this chapter is to provide a more comprehensive understanding of the contradiction of concentration, and thereby demonstrate that it is a persistent element of mainstream economic theory – and by extension, Australian merger law.

In the first three sections of this chapter, I examine the historical development of mainstream conceptions of competition. In this schema, I present the classical political economy of Smith as the foundation of a theory of competition based on market structures. Although Smith posited competition as a dynamic process, this process was ultimately restricted to the sphere of exchange. Next, I identify neoclassical perfect competition as the purest manifestation of a structural theory of competition. By assuming equilibrium as the analytical point of entry in a static model of pure exchange, neoclassical economic theory is forced to define competition as a specific market structure. In the third section, I consider two main currents of modern competition theory: the Industrial Organisation (“IO”) theory and the Chicago School approach. I contend that, despite their superficial differences, both theories are ultimately unified by a common emphasis on market structures. The fourth section of this chapter examines the neo-Marxian theory of monopoly capitalism and suggests that this theory can also be classified as a structural conception of competition. As such, it will be demonstrated that the contradiction of concentration is apparent in the theory of monopoly capitalism. By applying the theoretical framework established in the chapter, the final substantive section examines the conceptual foundations of Australian merger law and suggests that the contradiction of concentration is apparent in Section 50 of the Trade Practices Act 1974 (the “TPA”).

The Foundations of a Structural Conception of Competition: Smith’s “Perfect Liberty”

The principal concern of the classical political economists was to understand the process of social reproduction and economic accumulation in a class-structured society. In this context, Smith defined competition as the unrestricted mobility – or “perfect liberty” –

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of capital within the economy.\textsuperscript{8} This clear definition of competition produced an equally simple description of monopoly: the existence of obstacles to that mobility.\textsuperscript{9} Crucially, neither concept depended on an analysis of the number of competitors in a market.

Alongside these simple definitions of competition and monopoly, Smith formulated an unambiguous conception of how the process of competition plays out in economic life. The starting point for this analysis was a distinction between the natural price and the market price of a commodity. While market prices may fluctuate according to temporary or accidental factors, natural prices “constitute the ‘centres of gravitation’ around which these fluctuations occur”.\textsuperscript{10} Since market prices diverge from natural prices in the short-term, different rates of profit appear across the economy. Consequently, capital is invested in the most profitable sectors, while capital expended in areas of low profitability is not replaced. The overall result is the equalisation of profit rates across the economy, as market prices converge with natural prices within industries. As Smith explained:

The establishment of...any new branch of commerce...is always speculation, from which the projector promises himself extraordinary profits...If the project succeeds, [profits] are commonly at first very high. When the trade or practice becomes thoroughly established and well known, the competition reduces them to the level of other trades.\textsuperscript{11}

Crucially, therefore, the principle of equalisation presupposes competition in the sense of free mobility. Yet, despite observing a tendency towards the equalisation of profit rates, Smith recognised that equilibrium is rarely obtained. It is only through a dynamic understanding of competition as a process in accumulation that the principle of profit equalisation is compatible with persistently differentiated profit rates in reality.\textsuperscript{12}

Nonetheless, Smith’s theory can be identified as the genesis of a structural conception of competition. Although Smith theorised competition as a dynamic process, the process


\textsuperscript{9} Smith, therefore, referred to the “monopoly of the home market” when discussing duties and prohibitions on imports. See Smith, \textit{op. cit.}, p568.


\textsuperscript{11} Smith, \textit{op. cit.}, p159.

occurred exclusively in the sphere of exchange. Thus, on a basic level, competition is constrained by the market structure. The concept of perfect liberty can only be defined by reference to the concrete structural conditions of a market – such as the level of barriers to entry and exit – and measured in terms of actually existing markets.

According to one interpretation, *The Wealth of Nations* is the earliest expression of the position that the market is the most efficient mechanism for allocating resources according to the interests of individuals.\(^\text{13}\) Based on this interpretation, Smith is sometimes considered the “first systematic contributor” to neoclassical economics.\(^\text{14}\) Similarly, Smith conceived on competition purely within the sphere of exchange. It is for this reason that he may be considered the “first systematic contributor” to a structural theory of competition – and *not* because his concept of perfect liberty was the logical antecedent of perfect competition. According to Smith, competition was a dynamic process that produced a tendency towards equilibrium. In contrast, by assuming equilibrium as the analytical point of entry, neoclassical economic theory is forced to adopt a static, ahistorical conception of competition as a specific market structure.\(^\text{15}\)

**Neoclassical Perfect Competition: A Pure Structural Theory of Competition**

Whereas the classical political economists saw the economy as a system of social reproduction, neoclassical theory sidelined the phenomenon of production in favour of a model of pure exchange.\(^\text{16}\) In this framework, individuals are analytically central; broadly categorised as consumers and producers, individuals are assumed to act rationally and in their self-interest in order to maximise utility and profit respectively. Consequently, the principal aim of neoclassical analysis is to determine the equilibrium prices under which individuals maximise their objective functions.\(^\text{17}\) In this schema, competition is theorised

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\(^{13}\) Theorists such as Samuelson have identified in Smith the embryonic forms of the approach later taken up by the neoclassicists. Certainly, such an approach is apparent in Books I and II of *The Wealth of Nations*. However, in Books III-V, Smith writes from the perspective of providing advice to a statesman. As such, Smith’s discussion of the invisible hand of the free market cannot be read outside of his emphasis on the sovereign’s regulation of economic processes in reality. See further Tony Aspromourgos (2008) “A Wealth of Nations”, *History of Economics Review*, 48, 95-100.


\(^{16}\) Pasinetti, op. cit., p24.

as the set of conditions that bring about an optimal allocation of resources. In other words, (perfect) competition is equated with market equilibrium.

The initial question for a neoclassical theory of competition is therefore: what are the structural conditions of a market that correspond to equilibrium? In answering this question, neoclassical theorists conclude that the number and size of independent agents in the market are the key determinants of competition.¹⁸ From a Marxian perspective, Clifton suggests that this conclusion is based on a fundamental misunderstanding of Smith.¹⁹ It is often ignored that Smith’s theory of competition was constructed primarily from a world of merchant capital. In the circuit of merchant capital, all capital held in the form of commodities is ultimately restored to liquidity. As such, the conditions of free capital mobility are established in the sphere of exchange, and merchants can easily direct financial capital to areas of high return. By contrast, in the circuit of industrial capital, a portion of capital is fixed. Thus, Clifton observes:

> The small firm of two hundred years ago, producing a single product in a single industry, was far less free to employ [capital] in any sphere, as the merchant could. On the contrary, in order to preserve its fixed investment, the firm was generally committed to expanding production in its own sphere by reducing costs through economies of scale. ²⁰

So, by conflating industrial capital with financial capital, neoclassical theory concludes that equilibrium would be attained through the free movement of atomistic firms in pursuit of profit maximisation. However, this description overstates the matter since it implies a dynamic element in the theory. In actuality, the neoclassical analysis starts and ends with the state of equilibrium. Thus, neoclassical theory must go one step further and identify the specific market structure of perfect competition. Once again, Smith is used as a guide under dubious pretences. According to Smith, the movement of capital according to differentiated profit rates produces a tendency towards equilibrium, such that above average rates of profit are equalised by the arrival of more capital in that specific industry. Although Smith conceded that equilibrium was rarely attained,

¹⁸ Indeed, the other conditions of perfect competition (homogeneity of products, perfect mobility, perfect information, etc.) mostly relate back to this central condition: the existence of a large amount of atomistic firms. For instance, if firms are not producing a homogeneous output, in essence there are less independent firms in the same market, and the central condition of perfect competition is violated.


²⁰ Ibid.
neoclassical theory idealises that exact state as perfect competition – when the market is populated by a sufficiently large number of atomistic agents.

The origins of this approach, which has been labelled the “quantity theory of competition”, can be found in the work of Cournot. Cournot suggested that markets diverged from conditions of competition to the extent that market price exceeded the marginal costs of firms. According to Cournot, the difference between marginal cost and price would approach zero as the number of rivals in a market approached infinity. In this context, the large number of total firms meant that each individual firm had an “inappreciable” effect on the market price and was effectively a “price-taker” – a situation Cournot described as “unlimited competition”. In this way, Cournot’s unlimited competition, and not Smith’s perfect liberty, is the “logical ancestor” of perfect competition. In the concept of unlimited competition, the structural determination of competition was first expressed in its most pure form – pure in the sense that competition is equated with a specific market structure. Furthermore, in Cournot’s theory, as well as neoclassical theory more generally, the contradiction of concentration is glaringly apparent: the growth of capital is, in itself, an aberration to the structural conditions of competition.

Following the logic of perfect competition, neoclassical theory suggests that any deviation from the conditions of a perfectly competitive market is a negation of competition itself. Yet, since the perfectly competitive market was only ever a theoretical abstraction, neoclassical theory seemed to imply that competition never actually existed in reality – a conclusion with critical implications for the relevance of the theoretical framework. Consequently, the theory of imperfect competition was developed by Robinson and Chamberlin in order to “add realism” to the neoclassical analysis. Yet, ultimately, the concept of imperfect competition reinforced the structural ideal of perfect competition, which was seen as the “benchmark” from which capitalist reality

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22 Cournot, op. cit., p90.
25 Robinson, op. cit.
27 Clifton, op. cit., p137.
diverged to varying degrees. Imperfect competition thus became the genus for market structures that did not approximate perfect competition.

In the neoclassical framework, monopoly must be conceptualised outside of the theory of competition, as an exceptional case. Monopoly is defined as a market structure populated by a single firm that is able to exercise unrestricted control over market outcomes, particularly price and output. This definition positions monopoly and competition as exclusive forms and directly reproduces the neoclassical ideal of perfect competition. Yet, just as perfect competition has no existence outside of neoclassical theory, the completely unrestrained monopolist is scarcely a reality, and thus also emerges as a theoretical abstraction.

Nonetheless, these idealised concepts are retained in order to determine the level of competition in observed markets. The neoclassical method starts with the construction of perfect competition and monopoly and the proposition that “between these two extremes…are most real world markets.” Analysing competition is thereafter a question of comparing existing market structures to these ideal types and placing those markets on a continuum between them. Consequently, neoclassical theory has progressively accumulated a multitude of market classifications. Yet, this relentless taxonomy of the market is unable to keep pace with the concrete modalities of a social formation. Indeed, these classifications have themselves become ideal types, and the implications of the models they underpin are of limited relevance to real industries.

Crucially, the exercise of determining competition by reference to ideal structures reinforces the contradiction of concentration in mainstream theory. By increasing the magnitude of firms (concentration) – and possibly even reducing the number of firms

29 In an exchange of letters with Augustin Cournot, Léon Walras identified indefinite competition (synonymous with Cournot’s unlimited competition and neoclassical perfect competition) as “the general case” and monopoly as “a special case”. See Serge-Christophe Kolm (1968) “Léon Walras’ Correspondence and Related Papers: The Birth of Mathematical Economics: A Review Article”, *The American Economic Review*, 58(5), p1339, footnote 34.
30 Bryan, *op. cit.*, p82.
33 For instance: oligopoly, duopoly, oligopolistic competition and monopolistic competition.
(centralisation) – in an economy, the accumulation of capital necessarily pushes markets further from the idealised conditions of perfect competition.

The Continuing Legacy of Market Structures: Modern Competition Theory

While Cournot, Marshall, Walras and other early neoclassical theorists were predominantly concerned with constructing a model of the competitive system, mainstream competition theory in the twentieth century took on an additional purpose: to provide theoretical foundations for the development of competition policy. This extra role encouraged mainstream theory to move away from the restrictive conditions of perfect competition. Two main currents have developed in this vein: Industrial Organisation (“IO”) theory and the Chicago School approach.

Emerging from the legacy of Robinson and Chamberlin, IO theory may be characterised as the study of the imperfect market structures that exist in the real world. The central principle of IO theory is that the performance of markets is principally determined by their structure. As such, regulation plays an important role in the IO framework in reproducing competitive market structures. This approach, which is commonly associated with the Harvard School of Economics, was dominant in US antitrust law in the mid-twentieth century and is currently a strong influence on Australian competition policy.

The principal tenet of the Chicago School approach is that competition can only be measured in terms of economic efficiency. In this framework, market structures are shaped by the differing efficiencies of firms over time. Accordingly, market concentration is not regarded as a sign of market power, but as the result of superior efficiencies. This approach rests on a belief in the long-run effectiveness of the market mechanism, and therefore recommends minimal government regulation. Chicago School theory has wielded a dominant influence over the conceptual framework of US

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antitrust law since the mid-1970s, and the Chicago approach plays an increasingly significant role in the Australian context.36

Much emphasis has been placed on the diametric opposition of the Harvard and Chicago approaches.37 The overarching contention of this section is that this opposition is overstated. Both theories are ultimately unified by a common emphasis on market structures. Consequently, the perceived differences between the theories fall away, and the continuity of a structural conception of competition in mainstream theory is reasserted.38 In this respect, the terms of the debate regarding the appropriate theoretical foundations for competition law are shackled by the contradiction of concentration. It is this point, and not a comprehensive overview of the two schools, that will be advanced in this section. As such, less attention will be devoted to IO theory, in which the emphasis on structure is more clearly apparent.

The concept of workable competition was developed by early IO theorists as a reaction to the unrealistic conditions of perfect competition.39 By assessing whether a market is working as effectively as could be expected in reality, workable competition would serve as a clear rule for regulatory bodies that seek to preserve or increase competition.40 Yet ultimately this approach did little to move away from the established practice of applying perfect competition as a standard of reference.

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36 The growing centrality of economic efficiency in Australian competition policy is indicative of the increasing significance of Chicago School thinking in Australian competition policy. This issue is considered in Chapter 3, “The Rise of Economic Efficiency”,
37 See for instance Schmidt and Rittaler, op. cit., xiv.
38 Furthermore, competition law is never purely informed by one approach or the other in practice. While judges may on occasion give credence to particular theorists, overall policy generally employs some combination of both approaches. This is particularly the case in Australia. In Re QCMA, the Tribunal gave effect to a modified version of the Industrial Organisation paradigm, accommodating a role for economic efficiency in the context of an overarching emphasis on the structural determinations of competition (see Re Queensland Co-operative Milling Association Ltd and Re Defiance Holdings Ltd (1976) 1 ATPR 40-012). Indeed, Jones suggests that the ACCC has employed both approaches in a pragmatic fashion, “sometimes leaning towards one, sometimes to the other”. See Evan Jones (2005) “Liquor Retailing and the Woolworths/Coles Juggernaut”, Journal of Australian Political Economy, 55, p32.
In 1949, Edward Mason argued that competition law should promote not only workable market structures, but also effective business performance.\footnote{Edward S Mason (1949) “The Current Status of the Monopoly Problem in the United States”, Harvard Law Review, 62(8), p1266.} However, Mason conceded that it would be “extremely difficult to devise tests that can be administered by a court of law” to assess business performance.\footnote{Ibid., p1281.} By contrast, market structure and conduct lend themselves to clear legal standards. Thus, following empirical work by Bain,\footnote{Joe S Bain (1956) Barriers to New Competition, Cambridge: Harvard University Press.} the structure-conduct-performance (SCP) paradigm was developed. In the SCP model, causality is unidirectional, such that market structure determines conduct, which in turn conditions performance. Consequently, Mason’s attempt to incorporate the dynamic element of business performance in a theory of competition was ultimately a justification for a continued emphasis on static market structures.

Although Scherer later modified the SCP model such that conduct also influenced structure,\footnote{Scherer and Ross, op. cit.} the structural conditions of a market are still considered the key determinants of competition in this paradigm. Moreover, although modern IO theorists are cautious to avoid “over-reliance upon market concentration as the significant element of structure”,\footnote{Maureen Brunt (1994) “The Australian Antitrust Law After 20 Years – A Stocktake”, Review of Industrial Organization, 9(3), p502.} the number and size of firms in a market continually resurface as the key indicators of market power in this framework. Consequently, IO theory is unable to avoid the contradiction of concentration.

Chicago School theorists acknowledge that the state of market equilibrium will never actually be reached. Nonetheless, equilibrium is considered “a guiding star which has to be followed in all of its movements”.\footnote{Schmidt and Rittaler, op. cit., p1.} The Chicago approach therefore appears to offer a dynamic conception of competition similar to that of Smith. However, the Chicago School evaluates competition by reference to economic efficiency, which is in turn measured through neoclassical microeconomic analysis. This approach is favoured because of its analytical clarity.\footnote{George J Stigler (1968) The Organization of Industry, Chicago: University of Chicago Press, p12.} Yet that clarity is derived from the static-comparative method of neoclassical value theory – in which perfect competition and monopoly serve as standards of reference – and therefore comes at the direct expense of a dynamic
understanding of competition.\textsuperscript{48} In effect, the Chicago School is only able to escape the contradiction of concentration because it advocates less regulation, and not because it avoids a structural conception of competition as such.\textsuperscript{49}

The structural foundations of the Chicago approach are clearly exposed by its position on mergers. Representatives of the Chicago School oppose the regulation of market structures, except in the case of some horizontal mergers.\textsuperscript{50} The defining characteristic of a horizontal merger is that it occurs within a single market, and therefore directly impacts on the number and size of firms in that market. As Bork notes, vertical and conglomerate mergers do not “put together rivals”, and therefore do not threaten competition.\textsuperscript{51} Thus, by only opposing horizontal mergers, the Chicago School reveals the continued influence of the structural ideal of perfect competition in its theoretical framework.

However, Chicago School theorists such as Baumol have attempted to move beyond the overt structural determinations of the quantity theory of competition in the concept of contestability.\textsuperscript{52} According to the theory of contestability, the potential for new firms to enter the market is sufficient to force “incumbents” to act competitively. As such, efficient outcomes do not depend on the number and size of firms in a market, but only on their capacity to enter and exit the market.\textsuperscript{53} Crucially, therefore, contestability theory does not appear to give rise to the contradiction of concentration.

Contestability theory rests on three “highly restrictive” assumptions:\textsuperscript{54}

(1) Entry is free and without limit;\textsuperscript{55}

\textsuperscript{48} Schmidt and Rittaler, op. cit., p21.
\textsuperscript{49} Since Chicago School theory is underpinned by a free-market ideology, it recommends that mergers should generally not be prohibited. As such, the Chicago approach appears to bypass the contradiction of concentration. However, because the approach ultimately maintains a structural conception of competition, the contradiction emerges in new forms. This contention is central to Chapter 3.
\textsuperscript{50} Schmidt and Rittaler, op. cit., p87.
\textsuperscript{53} Baumol et al, op. cit., xix-xx; Baumol, op. cit., p2.
\textsuperscript{55} Thus, “potential entrants can, without restriction, serve the same market demands and use the same productive techniques as those available to the incumbent firms.” See Baumol et al, op. cit., p5.
(2) Entry is absolute: an entrant can establish itself in the market before an existing firm makes any price response; and

(3) Entry is perfectly reversible: exit is perfectly free and there are no sunk costs.56

The unrealistic nature of these assumptions has been exposed through extensive critical evaluation of contestability theory, primarily conducted by IO theorists.57 However, what these theorists have ignored is that the restrictive conditions of contestability ultimately render the theory synonymous with perfect competition. In more concentrated markets, firms generally employ a greater amount of fixed capital.58 This condition in itself violates the assumptions of contestability: the large minimum capital required to produce competitively acts as barrier to entry (assumption 1), while the amount of capital committed to production is also a barrier to incumbents exiting the market (assumption 3).59

A market begins to approximate the conditions of contestability as the size of firms – and therefore the amount of fixed capital – decreases. At the most extreme, a market can only be perfectly contestable if no capital is fixed in production at all – in other words, in the case of merchant capital. This conclusion brings the Smithian underpinnings of contestability theory into full relief.60 Yet the concept of contestability was intended to theorise competition between firms (that is, industrial capital), and therefore must account for some fixed capital. At the margin, a market will be contestable if firms are so atomistic that:

56 In light of these assumptions, Shepherd suggests that the term “ultra-free entry” is more appropriate than contestability. See William G Shepherd (1984) “‘Contestability’ vs. Competition”, The American Economic Review, 74(4), pp 572-573.


58 Not only will firms in concentrated markets employ a larger amount of fixed capital as a result of generally being bigger than firms in less concentrated markets, but the type of industries that tend to be populated by fewer producers are often those with high fixed costs relative to other costs – such as the Australian steel or automotive industries.


60 For an evaluation of the relationship between perfect liberty and contestability, see Bradley, op. cit., pp 19-32.
(1) They can easily ‘set up shop’;\textsuperscript{61}

(2) Their entry is relatively insignificant considering the multitude of other atomistic firms; and

(3) The marginal amount of fixed capital committed in production does not affect exit.

Here the theory of contestability returns full-circle to the theory of perfect competition – and by extension, the contradiction of concentration. Indeed, Baumol et al acknowledge that “a perfectly competitive market also satisfies the requirements of perfect contestability”.\textsuperscript{62} Yet they argue that contestability is a “substantive generalisation” of perfect competition, and therefore applies to more cases.\textsuperscript{63} In actuality, the theory only holds in the case of perfect competition.

The failure of both IO theory and the Chicago School to construct a dynamic conception of competition has inspired recent attempts to theorise competition using game theory.\textsuperscript{64} Game theorists study the interaction of rational agents in strategic situations. This approach promises much for a theory of competition: instead of defining competition in terms of market structures, these structures simply provide the rules of the game and the field of play, while competition is conceived as the dynamic and strategic process of interaction between the players.

Yet, perhaps unsurprisingly, the models of game theorists often produce indeterminate equilibria. In order to bring about a definite equilibrium, game theorists must impose

\textsuperscript{61} Since potential entrants are so small, they can, without restriction, serve the same minute market demands and use the same productive techniques as those available to the incumbent firms – who are also very small. See footnote 55.
\textsuperscript{62} Baumol et al, \textit{op. cit.}, p6.
\textsuperscript{63} Baumol et al, \textit{op. cit.}, p15.
restrictive rules, which increasingly remove the resultant models from reality. Indeed, the archetypal models of competition – the Cournot model and the Bertrand model – generate different results because producers are assumed to compete on either quantity or price.65 If these restrictive assumptions are removed, and firms are able to compete on both price and quantity, the model produces indeterminate equilibria.66

In a further attempt to produce definite results, game theorists generally assume that agents’ beliefs are consistently aligned.67 In other words, no rational agent expects to be surprised by the actions of another rational agent because all are identically informed.68 This assumption immediately reduces game theory’s ability to theorise the dynamic process of competition.69 Thus, there is necessarily a trade-off between the ability of game-theoretic models to produce definite results and their applicability to the real world.70 In most cases, game theorists emphasise the former at the expense of the latter by imposing restrictive structural conditions. Consequently, game-theoretic conceptions of competition provide an inadequate foundation for legal principle and competition policy.

A Structural Critique of Capitalism: The Neo-Marxian Framework

This section contends that the neo-Marxian conception of competition displays the same emphasis on market structures that has united the theories of competition considered throughout this chapter.71 In *Monopoly Capital*, Baran and Sweezy suggested that Marx’s

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65 In the Cournot model, in which agents compete only on quantity, output is less than it is under conditions of perfect competition, but greater than it is under monopoly. Similarly, price is higher than perfect competition, but lower than monopoly. In the Bertrand Model, which is purely concerned with price competition, duopoly ultimately results in the same outcomes as perfect competition.


69 Indeed, through the assumption of consistently aligned beliefs, agents are presented homogeneously. In this way, there are clear similarities between this construction and the representative atomistic firm of perfect competition.


71 This argument provides justification for a discussion of the neo-Marxian framework in a chapter that is predominantly concerned with mainstream theories of competition. In addition, it is worth noting that the theory of monopoly capitalism has gained widespread appeal within the Marxian tradition. Indeed, Weeks suggests that “most modern Marxist writers proceed on the presupposition that contemporary capitalist
The theory of capitalism rested “in the final analysis on the assumption of a competitive economy.” The theory of monopoly capitalism is therefore intended “to bring Marx’s Capital up to date, describing those laws of motion that [constitute] the differentia specifica of advanced accumulation” under conditions of monopoly.

Baran and Sweezy identified nineteenth century Britain as the principal example of competitive capitalism. In this context, the “typical economic unit” of competition is “the small firm producing a negligible fraction of a homogeneous output for an anonymous market”. This definition is almost identical to that of the atomistic firm of neoclassical perfect competition. Similarly, monopoly is defined as “a large scale enterprise producing a significant share of the output of an industry”. Consequently, in the neo-Marxian framework, competition and monopoly are defined purely within the market.

Although Baran and Sweezy situated monopoly “at the very centre of the analytical effort” in Monopoly Capitalism, they did not devote a significant amount of attention to defining competition and monopoly; the authors simply assumed the widespread prevalence of the latter as a theoretical point of departure. The structural foundations of the neo-Marxian approach are even more apparent in contributions that have been specifically concerned with defining competition and monopoly. At the most extreme, the “degree of monopoly” concept advanced by Kalecki and Sylos-Labini “simply provides continuum within the neoclassical antithesis”.

Neo-Marxian theorists have placed great emphasis on Marx’s observation that “competition rages in direct proportion to the numbers, and in inverse proportion to the society is noncompetitive” (Weeks, op. cit., p150). In this sense, it is legitimate to classify the theory of monopoly capitalism as “mainstream” without necessarily suggesting that it displays distinct similarities to orthodox economics. However, the point can be taken further than mere semantics. A discussion of the neo-Marxian theory of competition is included in this chapter because of its emphasis on market structures—a characteristic it shares with mainstream conceptions of competition.

74 Baran and Sweezy, op. cit., p6.
75 Ibid. Thus, “full monopolization” occurs when a single “giant corporation” establishes effective control over an entire market (see p51).
76 Bryan op. cit., p81.
77 Baran and Sweezy, op. cit., p6.
78 Bryan, op. cit., p80.
magnitudes, of the antagonistic capitals.” While Marx wrote many passages that dealt with the concept of competition, this statement is undoubtedly the closest one can get to ‘reading’ the quantity theory of competition into Marx – which is indeed the approach adopted by the neo-Marxian theorists. Foster, who is also a neo-Marxian, concedes that “Baran and Sweezy’s perspective on competition and monopoly is much closer to the neoclassical approach than it is to the neo-Ricardian, and fundamentalist Marxist, view.” Nonetheless, he continues, “the same could be said of Marx”. Ultimately, this section is not intended to determine the ‘Marxian-ness’ of the theory of monopoly capitalism, but simply to highlight the continuity between the neo-Marxian and mainstream conceptions of competition. In this respect, Foster’s concession is significant.

The neo-Marxian theory of competition is centred on an evaluation of market structures. Thus, like its mainstream counterparts, it also confronts the contradiction of concentration. In fact, the contradiction is perhaps clearest in the theory of monopoly capitalism, which – unlike the neoclassical model of pure exchange – accommodates a concept of accumulation. In Baran and Sweezy’s schema, the concentration and centralisation of capital leads directly to the monopoly stage of capitalism. Consequently, the process of accumulation necessarily undermines competition in their framework; the two are contradictory forces. As Williams observes, “the monopoly-capitalism writers observe an inconsistency: to the extent that [Marx’s] prediction of centralisation is vindicated, [his] competitive analysis cannot be applied to twentieth century capitalism.” In this sense, the neo-Marxian theory of monopoly capitalism is essentially generated by the fundamental incongruity of competition (as it is understood in this context) and accumulation – in other words, by the contradiction of concentration.

This section has demonstrated that this thesis is not concerned with constructing an artificial opposition between mainstream and Marxian economics. Rather, the thesis

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80 The difficulty of constructing a unitary and coherent Marxian theory of competition is considered in Chapter 4, in the section “Competition, Accumulation and Marx’s Method”.
81 Foster, *op. cit.*, pp 59-60.
82 Ibid., p60.
83 Similarly, it is not material to determine whether or not the theory of monopoly capitalism rejects the law of value as the regulating force of capitalist accumulation. Suffice to say that the capital-market relation, rather than the capital-labour relation, is analytically central in the neo-Marxian framework.
seeks to advance a dichotomisation between *structural theories of competition and conceptions of competition as a process in accumulation*. In this respect, both the neoclassical and neo-Marxian approaches have been situated in the former category. On the other hand, it has been demonstrated that Smith theorised competition as a dynamic process within accumulation, despite also providing the foundations for a structural approach. Similarly, Baumol’s contestability theory has been shown to emphasise competition as an ongoing process – albeit in form, rather than substance. Furthermore, in the final chapter of this thesis, an alternative Marxian theory of competition is presented that is not contingent on an analysis of market structures.

Nonetheless, this chapter has indicated that mainstream economic theory generally employs a structural conception of competition because of the analytical centrality of market structures in the mainstream paradigm. Equally, Chapter 4 will demonstrate that a theory of competition as a process in accumulation is most compatible with the Marxian framework, in which accumulation is an integral element. Accordingly, while this thesis is principally concerned with the dichotomy between competition as a market structure and competition as a process in accumulation, mainstream theory tends to emphasise the former, while Marxian theory is most compatible with the latter. Consequently, it would be reasonable to hypothesise that Australian merger law is currently underpinned by a structural conception of competition – since the hegemony of mainstream theory is perhaps most apparent in economic law such as the TPA. The following section presents arguments in support of this hypothesis.

**The Theoretical Foundations of Australian Merger Law**

Australian merger law is concerned solely with the regulation of competition in the sphere of exchange. Section 50 of the TPA prohibits mergers that are “likely to have the effect of substantially lessening competition in a market” (emphasis added). The TPA does not provide a comprehensive definition of the concept of the market. However, in its *Merger Guidelines*, the ACCC defines the market as the “space in which rivalry and competition take place” (emphasis added).85 The TPA also fails to define competition –

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despite it being the central concept of the legislation. Returning to the Merger Guidelines, the ACCC defines competition as the ongoing rivalry between participants in a market.\textsuperscript{86} These definitions produce circularity between the law’s conception of the market and competition. Consequently, the concepts are mutually constituted, and competition cannot be understood outside of the structural confines of the market in Australian merger law. This point reinforces the conclusion drawn earlier in the chapter that, despite the perceived differences between IO theory and the Chicago approach, the terms of the legal debate are ultimately shackled by a common emphasis on market structures.

The ACCC’s circular definitions of competition and the market mean that, in effect, neither concept is adequately defined. Nonetheless, it is clear from the definitions that both concepts depend on the interaction of independent agents (“rivalry”). Thus, in Australian merger law, the defining structural element of both the market and competition is the rivals themselves. This contention is supported by the procedure of market definition under the TPA. In Australian competition law, the hypothetical monopolist test (HMT) serves as an “intellectual aid to focus the exercise” of market definition.\textsuperscript{87} This test effectively determines the size of a market by considering whether a single producer supplying the market would be able to raise prices without customers switching to alternative products. By focusing analysis on the ideal of monopoly, the HMT reproduces a structural conception of competition, in which the number and size of suppliers is the critical element.\textsuperscript{88}

In Re QCMA,\textsuperscript{89} the Trade Practices Tribunal gave effect to a modified form of the SCP paradigm in Australian merger law.\textsuperscript{90} In this framework, competition is determined by the structural conditions of a market. Although the Tribunal identified a range of structural considerations other than the number and size of competitors in a market, the presence of “independent rivalry” was emphasised as the key determinant of competition.\textsuperscript{91} In 1992, Section 50 was amended to include a non-exhaustive list of factors that must be

\textsuperscript{86} Ibid., paragraph [3.1].
\textsuperscript{87} Seven Network Limited v News Limited [2007] FCA 1062, at [1786].
\textsuperscript{88} Leaving aside the imprecision and onerous data requirements of the hypothetical monopolist test – which are, in themselves, genuine concerns.
\textsuperscript{89} Re Queensland Co-operative Milling Association Ltd and Re Defiance Holdings Ltd (1976) 1 ATPR 40-012.
\textsuperscript{90} Also see Outboard Marine, where the court confirmed that, for the purposes of the test in Section 50, a substantial lessening of competition involves a change in the structure of a market (Outboard Marine Australia Pty Ltd v Hecar Investments (No 6) Pty Ltd (1982) 66 FLR 120).
\textsuperscript{91} Re Queensland Co-operative Milling Association Ltd and Re Defiance Holdings Ltd (1976) 1 ATPR 40-012 at 17,246.
taken into account in a merger evaluation.\textsuperscript{92} The number and size of competitors in a market (the “level of concentration”) is only one of nine such factors.\textsuperscript{93} Nonetheless, in practice, the ACCC has condensed these “merger factors” into a five-stage evaluation procedure, in which market concentration is the primary consideration. Furthermore, five of the other merger factors are ultimately contingent on an evaluation of the number and size of competitors in a market.\textsuperscript{94}

This section clearly illustrates that the theoretical foundations of Australian merger law are consistent with a structural conception of competition. The point is perhaps best demonstrated empirically: the number and size of competitors in a market were cited as key reasons for the determination of 84 of the 111 mergers reviewed by the ACCC in 2009.\textsuperscript{95} Accordingly, the contradiction of concentration – which is ultimately a theoretical contradiction – is articulated by Section 50 of the TPA, and thereby given a concrete existence. Chapter 2 will explore how the law has developed in response to this contradiction.

Conclusion: The Spectre of Perfect Competition

In 1926, Sraffa highlighted the logical inconsistency between the assumption of perfect competition and Marshall’s theory of price determination, in which the supply curve is derived from the laws of variable returns.\textsuperscript{96} By extension, Sraffa’s robust criticism of neoclassical value theory solidified the position that perfect competition is incompatible with a dynamic conception of firm growth and, in particular, increasing returns to scale. Under conditions of increasing returns, firms move further from the atomistic ideal of

\textsuperscript{92} \textit{Trade Practices Amendment Act 1992} (Cth).

\textsuperscript{93} The other factors in Section 50(3) are: the level of import competition; the height of barriers to entry; the degree of countervailing power in the market; the ability to increase prices and profit margins; the availability of substitutes; dynamic characteristics (including innovation and product differentiation); the removal of a vigorous and effective competitor; the nature and extent of vertical integration.

\textsuperscript{94} These are: the level of import competition; the degree of countervailing power in the market; the ability to increase prices and profit margins; the availability of substitutes; the removal of a vigorous and effective competitor.

\textsuperscript{95} As at 23 September 2009. Of the remaining 27 mergers, several related to cases involving unique regulatory issues (including the Chinalco/Rio Tinto merger, as well as one merger in the taxi industry, in which prices are regulated by the government, and 5 mergers concerning the Victorian public transport industry), 8 did not concern horizontal mergers, no decision was made in 4 cases, and in one case the proposed acquisition was withdrawn. This information has been gathered from the ACCC’s Informal Merger Clearance Register, at http://www.accc.gov.au/content/index.php?contentId=750991#informal.

perfect competition, and ultimately converge on monopoly. This position is essentially the earliest and most simple expression of what I have termed the contradiction of concentration.97

Despite this and other criticisms,98 this chapter has demonstrated that the concept of perfect competition has continued to play a significant role in mainstream theory. Arnsperger and Varoufakis advance one explanation for this paradox: in order to demonstrate that the rational actions of independent agents in the market produce equilibrium, mainstream economists are forced to the start their analysis from the position of equilibrium.99 This “axiomatic imposition of equilibrium” necessarily leads to the formation of unrealistic assumptions, such as the existence of infinite atomistic firms in perfect competition or – what has been shown to amount to virtually the same thing – “ultra-free entry” in contestability theory.100 In this sense, mainstream theory must cling to the concept of perfect competition in order to produce determinate answers to economic questions. As Hicks noted, “a general abandonment of the assumption of perfect competition…must have very destructive consequences for economic theory”.101

There is a more fundamental explanation for the persistence of perfect competition in mainstream economic theory. Mainstream theory is unified by the analytical centrality of the market. More accurately, the study of the market accounts for the totality of mainstream theory – in which the model of pure exchange is considered “a principle of universal validity”, which is used to explain “the whole of economic reality”.102 Consequently, economic analysis is inevitably confined to market structures. As such, this chapter has demonstrated that mainstream conceptions of competition may be classified as structural theories of competition. A similar conclusion was reached in

98 For instance, the attack on Walrasian competitive equilibrium advanced by the Sonnenschein-Mantel-Debreu result.
99 Arnsperger and Varoufakis, op. cit., p6. The authors argue that “methodological equilibration” is a fundamental tenet of mainstream economic theory.
100 The assumption of consistently aligned beliefs in game theory is also similar in the sense that it is a highly restrictive structural condition that is imposed on a model in order to produce equilibrium. However, unlike contestability, this assumption cannot be completely reduced to the conditions of perfect competition – although, as was suggested in the body of this chapter, there are clear similarities.
101 Hicks, op. cit., p83.
relation to the neo-Marxian theory of monopoly capitalism – which is distinguished from
the broader Marxian problematic by its emphasis on market structures.

In the concept of perfect competition, mainstream theory developed a pure structural
understanding of competition, in which the separation between competition and the
market structure was obliterated. As long as the market is analytically central in
mainstream economics, competition must be understood in relation to market structures
– and perfect competition looms as the most complete attempt to integrate a theory of
competition with the model of pure exchange. Just as a conceptual focus on market
structures has been incorporated into Section 50, so too has the contradiction of
concentration. The objective of the next chapter is to explore how that contradiction has
been emphasised and reproduced throughout the historical development of Australian
merger law.