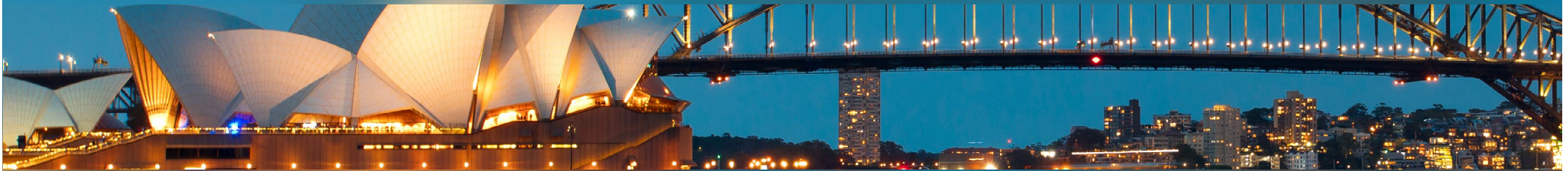


C L I F F O R D
C H A N C E



THE ACCC'S MANDATORY MERGER NOTIFICATION REGIME GOES LIVE:
A CHECKLIST OF KEY FEATURES

On 30 June 2025, the Australian Government published the final Competition and Consumer (Notification of Acquisitions) Determination 2025 (“Determination”), following over 12 months of consultation in relation to the introduction of a mandatory and suspensory merger review process in Australia. **The new mandatory merger notification regime is available to parties from 1 July 2025 on a voluntary basis. The ACCC will continue to accept applications for informal merger clearance and pre-clearance under the existing voluntary merger review regime until the end of September 2025. Notifications will become compulsory from 1 January 2026 for all transactions that satisfy the relevant notification thresholds.** An acquisition will be notifiable under the mandatory regime where it:

- (1) meets the monetary thresholds;
- (2) involves the acquisition of control;
- (3) where the transaction involves the acquisition of shares or assets that are “connected” to Australia; and
- (4) does not otherwise have the benefit of an exemption

(1) Monetary thresholds:

Acquisitions resulting in large or larger corporate groups	Acquisitions by very large corporate groups
a. Combined Australian revenue of the merger parties (including connected entities), is at least AUD 200 million on the contract date;	a. Acquirer has Australian revenue of more than AUD 500 million on the contract date;
AND	AND
b. The Australian revenue of the Target (including connected entities) is at least AUD 50 million; OR	b. Target has Australian revenue of more than AUD 10 million (including connected entities) on the contract date; OR
c. the transaction value is more than AUD 250 million (being the greater of the consideration payable or the market value of the shares/assets); OR	c. the cumulative Australian revenue from Target and any similar acquisitions in the last 3 years is at least AUD 50 million.
d. the cumulative Australian revenue from Target and any similar acquisitions in the last 3 years is at least AUD 50 million.	

Acquisitions involving a **Target that generates less than AUD 2 million** of Australian revenue will not be caught by the serial (or similar) acquisition threshold and acquisitions of Targets **not connected to Australia are excluded from notification requirements. Previously notified transactions are also exempt** (unless notified under the serial acquisition threshold).

Australian revenue is to be calculated in accordance with accounting standards for an entity's most recent 12-month financial reporting period, from transactions or assets within or into Australia. Gross revenue from exports out of Australia to customers in other jurisdictions can be excluded for calculation.

The revenue of the **Acquirer** must include that of “**connected entities**”. A “connected entity” includes those that are “related bodies corporate” under s4 of the Competition and Consumer Act 2010 (Cth), where one entity has the capacity or control to determine the outcome of decisions regarding another entity's financial and operating policies or where both entities are controlled by a common entity. If there is more than one principal party (or acquirer) to an acquisition, then the **very large corporate group revenue test** is satisfied if it is satisfied for any one of the principal parties.

The revenue of the **Target** must also include Australian revenue of connected entities where the acquisition is for **shares in a body corporate**. Where an acquisition involves assets, the Australian revenue attributable to the asset must be used (or if not reasonably practicable to do so, 20% of the market value of the asset must instead be used).

To avoid **double counting**, parties should not include the revenue of an entity whose revenue has already been included in the revenue attributable to a connected entity or related body corporate.

(2) Control test

An acquisition of shares in **private companies** (including private managed investment schemes and unlisted companies with fewer than 50 members), will only be notifiable if it results in the acquirer obtaining control over the target. ‘Control’ is the **capacity to determine the outcome of decisions regarding the target's financial and operating policies**. This test is capable of being satisfied by special purpose vehicles or through joint control with an associate.

An acquisition of shares in **listed companies** (or unlisted companies of more than 50 members or a listed registered scheme), will **not** need to be notified if, following the transaction, the **acquirer's voting power remains 20% or less**.

(3) Connection to Australia

For a transaction to be notifiable, the **Target** must **carry on a business in Australia**. This test will be satisfied if the share is in a body corporate that carries on business in Australia, or

the asset is used in, or forms part of, a business carried on in Australia.

– Other Thresholds

All acquisitions of **supermarket businesses**, in whole or part, undertaken by **Coles and Woolworths** will need to be notified.

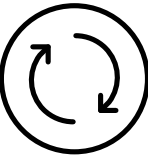
Transactions that may give rise to competition concerns should also be notified irrespective of whether the thresholds above are met as **the section 50 prohibition against mergers that substantially lessen competition will continue to apply**.

– Exemptions

Various exemptions to the notification thresholds apply, including but not limited to: **internal restructures and reorganisations** of entities that are related bodies corporate or related via partnership or trust; acquisitions **by** an administrator, receiver and manager or liquidator or those that occur pursuant solely to a **testamentary disposition**, intestacy or right of survivorship; and **prescribed routine acquisitions** in clearing and settlement activities, trading and capital raising activities and of certain financial and debt instruments such as derivatives and security interests **(subject to certain exceptions)**.

Acquisitions of **land** are not notifiable if they are made for the **purpose of developing residential premises** or if the acquirer is primarily engaged in buying, selling, leasing or developing land where **the acquisition is for a purpose other than operating a commercial business on the land**. Extensions or renewals of leases for land are not notifiable nor are acquisitions of a legal interest in land or of an

equitable interest in land where that equitable interest was notified.



Surprise hostile takeovers will be able to be confidentially reviewed and listed on the public register after 17 business days. This will allow the ACCC to make a **confidential decision** if the transaction is not likely to raise concerns.

- Substantive merger test and Associated Guidelines

The **Substantial Lessening of Competition (SLC)** test has been revised to include additional factors as to whether the transaction creates, strengthens or entrenches a substantial degree of market power. For transactions that cannot be cleared on the basis of the SLC test, parties may apply for consideration under the **“public benefits” test** (where public benefits outweigh public detriments), which will remain unchanged from the test currently applied under the existing merger authorisation process.

The ACCC has published its final [merger assessment guidelines](#), [interim merger process guidelines](#) and a [guide for businesses](#) to provide further detail around the analytical



approach and process considerations that will be used to assess transactions under the new regime. The ACCC’s new analytical guidelines detail how the ACCC will approach serial and “killer” acquisitions, multi-sided platforms, conglomerate effects and other novel theories harm.

- Merger review process

Under the mandatory notification regime, **pre-notification discussions** with the ACCC are strongly encouraged, particularly for acquisitions in concentrated sectors or those that may raise competition concerns or require remedies. The pre-notification process is not subject to any timelines and will likely be used by the ACCC to identify areas of focus and information to be provided.

Waivers from notification will be available from **1 January 2026** for acquisitions that are unlikely to meet notification thresholds or do not raise substantiative competition risks that warrant further investigation. The ACCC anticipates that a decision on a waiver application will be made within 20 business days. It will be a **public process** with applications to be placed on the ACCC’s Acquisitions Register. An **Exposure Draft** released on 3 September 2025 sets out and seeks feedback on proposed information requirements. The level of information required to seek a waiver under the proposal is comprehensive and similar to that in the ACCC’s short-form notification form, including a summary of the acquisition, details regarding the type of acquisition, the commercial rationale, the consideration payable and transaction value, the basis for seeking a waiver, a description of relevant goods and services supplied by the parties, and estimated revenues and market shares for goods and

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services supplied. Under the proposal transaction documents will also need to be supplied. **Consultation on the waiver process will remain open until 16 September 2025.**

A **Phase 1 review** will take up to **30 business days** with **early determinations** possible for “no issues” transactions after **15 business days**. **Phase 2 reviews** will take up to **90 additional business days** following which a transaction may be cleared with or without conditions or not approved. An optional application for a **public benefit assessment** can be made within **21 calendar days** of a phase 2 decision with a further **50 business days** for the ACCC to make a decision. The ACCC will retain scope to extend timelines in certain circumstances. **Approval will be valid for 12 months.**

Appeals (via an application for merits review) to the Australian Competition Tribunal can be made within 14 calendar days of an ACCC decision. Merits review may take up to 90 calendar days (and is extendable by a further 150 calendar days).

Parties in a **competitive bidding process** will not be able to notify an acquisition until such time that they either enter into or intend to enter into, an agreement pursuant to which an acquisition will take place. Notifiable acquisitions, including those that are notified voluntarily, will be stayed until the ACCC issues a determination that approves the transaction. A 14-day **standstill obligation** will also apply to all transactions cleared by the ACCC to allow the appeal period to lapse. Parties will need to be mindful of not engaging in conduct that could amount to **gun-jumping**.

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- Filling Fees

Applications for notification in 2025-2026 will be subject to the following cumulative fees that will be payable at each stage of the ACCC’s review:

An exemption will apply for small businesses that generate less than AUD \$10 million in aggregated turnover.

Stage of Review	Fee payable
Notification waiver application	AUD \$8,300
Phase 1 assessment	AUD \$56,800
Phase 2 assessment	AUD \$8,300
(1) If global transaction value is less than or equal to AUD \$50 million	AUD \$475,000
(2) If global transaction value is between AUD \$50 million to AUD \$1 billion	AUD \$855,000
(3) If global transaction value exceeds AUD \$1 billion	AUD \$1,595,000
Public benefits application	AUD \$401,000





– Information requirements

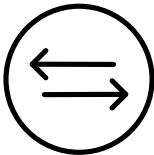
The ACCC will require a **complete notification in order for the clock to start**. Merger parties will need to notify the ACCC of their transactions via either a short form or long form [notification](#). The former is intended for transactions that are unlikely to raise competition concerns or for those involving only an interest in land. Both will require the provision of certain documents and information up-front, including market definition and estimated market shares, turnover information (see above), customer and competitor data, transaction documents financial reports, and organisational charts.

The ACCC has released [guidelines](#) detailing when long-form notifications should be used:

- **Horizontal Acquisitions** where parties supply products or services in the same market and their estimated combined market share post-acquisition is either (i) 40% or more and the increment from the acquisition is 2% or more; or (ii) 20-40% market share and the increment from the acquisition is 5% or more.
- **Vertical acquisitions** where a party supplies products or services in a market that is upstream or downstream from a market in which another party to the acquisition supplies products or services and one party has a market share of 30% or more while the other party has a market share of 5% or more.
- **Conglomerate acquisitions** where the parties supply products or services in related markets and one of the

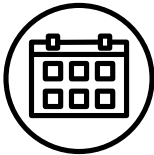
parties to the acquisition has an estimated market share equal to or greater than 30%.

- **Other circumstances:** where the transaction involves the acquisition of either: (1) a “maverick”; (2) an entity which develops or supplies a significant product or input in a market where the parties potentially overlap; (3) an entity with a significant user base; or (4) an entity which would provide the acquirer with access to competitively significant data.



– Changes to the Goodwill Exemption

Under the new merger regime, the ACCC has ability to declare that the goodwill exemption (from cartel and anticompetitive conduct) for non-competes and restraints of trade will not apply if their duration and/or geographic scope is broader than necessary for the legitimate protection of the purchaser in respect of the goodwill of the business being acquired. Parties must ensure that all restraints are tailored appropriately as information regarding them will need to be provided upfront in both short form and long form notifications.



– Transitional Period

The new mandatory regime will become **compulsory for all notifiable acquisitions from 1 January 2026**. Merger parties have been able to notify the ACCC under the new merger regime on a voluntary basis from 1 July 2025.

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Merger parties can also continue to apply for informal merger clearance or pre-clearance under the existing voluntary merger regime until 31 December 2025 (with applications for clearance under these pathways being accepted by the ACCC until the end of September 2025). Where informal clearance has been granted between 1 July 2025 and 31 December 2025 and the acquisition is put into effect within 12 months of receiving clearance, merger parties will not be required to notify under the new mandatory regime.

Applications for merger authorisation closed on 30 June 2025 and will no longer be accepted.

If you would like to discuss any aspect of the proposed merger reforms, including how it may affect your business or deal pipeline, or to organize a more detailed overview of the ACCC's new merger reforms, please do not hesitate to get in touch.

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