

Australian merger reform legislation: a new mandatory and suspensory merger regime

All acquisitions where the control and proposed 'monetary' thresholds are met must be notified to the ACCC.

What is an acquisition?

The following acquisitions are caught:

- shares in the capital of a body corporate or corporation;
- any assets of a person or corporation; or
- any other acquisition the Minister, following consultation and by legislative instrument, determines should be notifiable or exempt.

The new regime also applies to partnerships, unit trusts and interests in managed investment schemes.

What is control?

'Control' is the capacity to determine the outcome of decisions regarding the target's financial and operating policies. This closely aligns with section 50AA of the *Corporations Act 2001* (Cth).

Certain acquisitions of control are exempt:

- acquisition of shares in a listed company, listed scheme or a large unlisted company (ie >50 members) where the acquiring party's voting power is less than 20% or does not move from above 20% to below 100%;
- internal restructures and reorganisations; and
- ordinary business transactions, other than land and patents.

What are the proposed monetary thresholds?

Acquisitions are notifiable if the target has a *material connection to Australia* (ie it is 'carrying on a business in Australia' OR plans to carry on a business in Australia) AND at least one of the following is met:

Limb 1 'Large mergers'

The merger parties have a combined Australian turnover of at least A\$200 million AND EITHER

- i. the Australian turnover of at least two merger parties, or the cumulative turnover over a three-year period from acquisitions in the same or substitutable goods or services, is at least A\$50 million, or
- ii. the global transaction value is at least A\$250 million; OR

Limb 2 'Very large acquirers'

- The acquirer group's Australian turnover is at least A\$500 million AND
- the Australian turnover for at least two of the merger parties, or the cumulative turnover from acquisitions in the same or substitutable goods or services over a three-year period, is at least A\$10 million.

The above thresholds are not reduced for acquisitions of <100% interests.

Targeted: mandatory approval must also be sought for interests above 20% in an unlisted or private company, if the thresholds above are satisfied. Note that this was clarified during consultation with the Treasury Taskforce but has not yet been legislated.

When will the new regime commence?

30 June 2025

The formal merger authorisation process will remain in effect until 31 December 2025 but merging parties can only lodge applications for merger authorisations up until 30 June 2025.

1 July 2025 – 31 December 2025

Merging parties can voluntarily notify the ACCC under the new regime. Merging parties can continue to notify the ACCC under the informal process during this period.

1 January 2026

The new regime commences for all deals implemented from this date.

The new regime will not apply to acquisitions notified to the ACCC before 1 January 2026 where the ACCC has between 1 July 2025 and 31 December 2025: (i) granted merger authorisation; OR (ii) cleared the acquisition under the informal process AND the merging parties have put that acquisition into effect within 12 months of the ACCC's decision.

How will the ACCC assess acquisitions?

Substantial lessening of competition

The definition in a merger context is expanded beyond 'preventing or hindering competition', to include creating, strengthening or entrenching a substantial degree of power in any market.

The ACCC can consider the cumulative effect of all acquisitions put into effect by the merging parties within three calendar years of the date the merger filing was lodged, whether those prior acquisitions were individually notifiable or not.

Public benefit

Public benefit assessments will only take place after the ACCC's competition assessment.

The ACCC must find that the benefit would, in all the circumstances, outweigh the detriment to the public that would result, or be likely to result, from the acquisition.

ACCC review

Phase 1: 15-30 business days from notification.

Phase 2: up to an additional 90 business days.

The ACCC can extend these periods in certain circumstances.

Merits review

45-90 calendar days, which can be extended by up to 150 calendar days.

Judicial review of Tribunal decisions will take place in the Federal Court.

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