



Merger reforms in Australia

What you need to know

Australia's new merger regime marks a significant shift in how mergers and acquisitions are reviewed and regulated. Aimed at increasing transparency and scrutiny, the changes introduce a mandatory and suspensory notification process, giving the Australian Competition and Consumer Commission (**ACCC**) greater power to assess deals before they proceed. It's a notable step toward strengthening competition oversight.

Compulsory notification and penalties for non-compliance

From **1 January 2026**, notifiable acquisitions must not close until cleared by the ACCC (or Tribunal on review).

From **1 July 2025**, parties may voluntarily notify the ACCC of acquisitions under the new laws.

Consequences of breach:

- Transaction is legally void.
- Substantial penalties – maximum penalty amount is the greater of:
 - A\$50 million;
 - 3x value of benefit obtained; or
 - if benefit not able to be determined, 30% of adjusted turnover of corporate group during breach turnover period (or minimum of 12 months).

Notifiable transactions and thresholds

An acquisition of shares or assets must be notified where:

- target is '**connected**' with Australia;
- it involves an acquisition of assets of target, or '**control**' of target shares; and
- it meets the **monetary thresholds** (or specific ministerial designation, e.g., supermarkets),

unless (i) **exemption** applies, or (ii) notification **waiver** applies (details of waiver process still to be decided).

No residual call in power but no safe harbour.

Parties may choose to notify below the transaction thresholds, as ACCC retains power to go to Court to block the transaction if it is likely to substantially lessen competition (**SLC**).

Connection to Australia

A target is 'connected' with Australia if it 'carries on business' in Australia or, in the case of asset acquisitions, the assets are used in or form part of a business carried on in Australia.

Control

- **Safe harbor for listed companies (or unlisted with >50 members):** no control acquired if acquirer obtains ≤20% voting power or already has over 20%.
- **Other entities:** control reflects practical influence or patterns of conduct influencing finance or operations (s 50AA of *Corporations Act*, modified by *Competition and Consumer Act*).

Proposed thresholds*

Economy-wide thresholds**

Combined revenue of merger parties (including relevant connected entities) on contract date is **≥A\$200 million**, and either:

- revenue of target (including connected entities) or assets being acquired is **≥A\$50 million** OR;
- transaction value is **≥A\$250 million** (greater of market value or consideration under sale agreement).

Acquisitions by very large groups**

Acquirer (including connected entities) has revenue on contract date of **≥A\$500 million** AND revenue of target (including connected entities) or assets being acquired is **≥A\$10 million**.

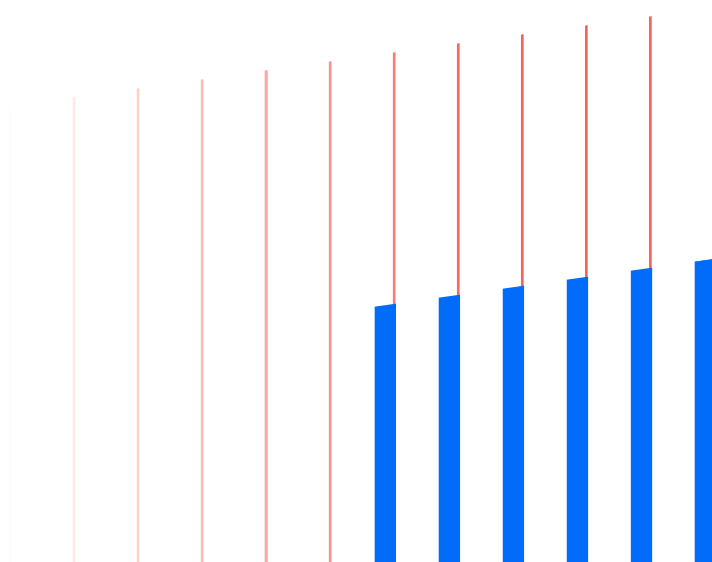
Creeping or serial acquisitions**

Combined revenue of merger parties (including connected entities) is **≥A\$200 million** and cumulative revenue from acquisitions by acquirer (including connected entities) in past 3 years involving competitive goods/services is **≥A50 million**.

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Acquisitions in 3-year look back period by acquirer where revenue of target (including connected entities) is under A\$2 million are **not counted.*

***Refers to Australian revenue.*



Overview of statutory timelines*

| Pre-notification discussions | Phase 1 Initial review 30 business days | Phase 2 In depth review 90 business days | Substantial Public Benefits (SPB) Consideration of substantial public benefits 50 business days | Parties may seek Tribunal review |
|---|--|--|---|---|
| ACCC 'encourages' pre-notification engagement of at least 2 weeks or 2-3 months for complex mergers | If Phase 1 remedy is proposed by day 20, Phase 1 is extended by 15 business days | If Phase 2 remedy is proposed by day 90 (the 60th day after the start of Phase 2), Phase 2 is extended by 15 business days | SPB Application must be lodged within 21 calendar days of Phase 2 determination | Application for Tribunal review must be lodged within 14 calendar days (90 calendar day review) |
| | | | If remedy is proposed within 35 business days, SPB consideration is extended by 15 business days | |

*Above timelines subject to statutory extensions and clock stops.

Proposed notification forms

Short and long form notifications, both with prescriptive up-front information, documents and data requirements:

- Short form proposed for acquisitions that are 'unlikely to raise competition concerns.
- Long form proposed for acquisitions based on the level of combined market share and market share increments and other circumstances, e.g.:
 - Horizontal: $\geq 40\%$ and $\geq 2\%$; $\geq 20\%$ to $< 40\%$, and $\geq 5\%$
 - Vertical: upstream party $\geq 30\%$ & downstream party $\geq 5\%$; or downstream party $\geq 30\%$ & upstream party $\geq 5\%$
 - Conglomerate mergers: parties supply adjacent products and one party's adjacent products have $\geq 30\%$ share.

Transitional arrangements

Informal merger clearance (including pre-assessment) still available in CY25 *but* after early October 2025 risk no decision:

- **Between 1 July and 31 December 2025:** parties receiving informal clearance have 12 months to complete under the transitional arrangements.
- **Prior to 1 July 2025:** informal clearance decision received does not benefit from 12-month transitional completion period, so need to complete by 31 December 2025, or file for updated informal clearance decision from the ACCC between 1 July and before 31 December 2025.

The Australian competition test for mergers has been changed to increase the focus on structural effects in concentrated markets

A merger will be permitted to proceed unless the ACCC is satisfied that the acquisition would, in all the circumstances, have the effect or likely effect of SLC in any market. Consistent with global trends, the proposed amendments clarify that this can result from creating, strengthening or entrenching a position of substantial market power.

Sale of business non-competes

Under the current Australian competition law, non-competes in relation to the sale of a business are exempt from the prohibition on cartel conduct if they are solely for the purpose of protecting the goodwill acquired by the purchaser. The ACCC will now have power to declare the exemption does not apply if it is satisfied that the provision is not necessary to protect the purchaser's goodwill.

What does it mean for global advisers and their clients?

With Australia's new merger rules, timing and strategy matter more than ever. For global advisers and their clients, it means earlier planning, tighter execution, and a sharper focus on regulatory risk. Mandatory filings and greater ACCC scrutiny mean deals involving Australia can't afford to leave competition issues to the last minute. Being proactive will be key - understanding the new regime, anticipating hurdles, and guiding clients through a more complex landscape with clarity and confidence.

Competition, Consumer and Market Regulation

Our Competition, Consumer and Market Regulation Group is widely recognised as the leading competition and regulatory practice in Australia, advising on many of the most complex competition law cases in Australia and globally.

We take a multi-disciplinary approach, integrating law and economics, plus a deep understanding of your business, your industry, and those who regulate it. That's why clients trust us to deliver advice that's practical, commercially sharp and designed to move with the pace of your business
– not slow it down.

Market recognition

Chambers Asia-Pacific 2025

🏆 Ranked band 1 for Competition / Antitrust in Australia

Legal500 2025

🏆 Ranked tier 1 for Competition and Trade in Australia

Global Competition Review 2025

🏆 Recognised as an 'Elite' practice in GOR100 Australia

Beaton Australia Client Choice Award 2025

🏆 Gilbert + Tobin is recognised in the category of 'Best Client Service'. We have now won this award for four consecutive years.

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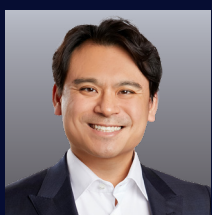
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