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Inside Australia's mandatory merger regime

What the data reveals

Australia – May 2026

On 9 April 2026, the Australian Competition and Consumer Commission (ACCC) published its first operational update on Australia's new mandatory merger control regime, revealing that 91% of applications made have been resolved within 20 business days in the first quarter of 2026.[1] The operational data covers three months from the start of the regime on 1 January 2026, and it reinforces the ACCC's confidence in the new regime.

Rather than materially slowing deal timelines, as many practitioners feared, the early evidence suggests that the ACCC is prioritising efficient clearance of low-risk transactions, while reserving substantive scrutiny for a narrower subset of deals that raise genuine competition concerns.

This article examines what the data published on the public register reveals about the practical operation of Australia's new merger regime. It explores the ACCC's emerging approach to waiver applications, the transaction profiles that have attracted closer scrutiny, and the procedural and strategic implications for lawyers advising clients on Australian transactions. We also consider the broader structural changes created by the regime, including the immediate public disclosure of filings and the evidentiary demands of the waiver process.

The new regime

Australia's shift from a voluntary, informal merger clearance regime to a mandatory and suspensory regime under the *Competition and Consumer Act 2010* (Cth) marks the most significant overhaul of Australian merger law in a generation.

The motivation for reform was threefold: to bring Australia into alignment with jurisdictions like the EU and the US; to introduce procedural transparency and consistency; and to allow anticompetitive mergers to be blocked before completion, rather than unwound by the courts after the fact.

Snapshot of the ACCC register

The ACCC's April 2026 update provides the first empirical window into how the regime is functioning in practice.[2] The ACCC's early clearance data has proven more favourable than its own pre-commencement projections.

Prior to the regime's introduction, the ACCC indicated that it expected approximately 80% of mergers to be cleared within 15 to 20 business days. However, during the first quarter, the ACCC approved or granted over 90% of notified acquisitions or waivers within 20 business days, a material improvement on its benchmark, which provides reassurance to transaction parties concerned about the impact of mandatory notification on deal timelines.

Another surprise in the data is that the number of notification waiver applications greatly exceeded the ACCC's estimate of 8.3 waiver reviews per month (approximately 33 in total), while the number of Phase 1 applications was much less than the expected 27.9 per month (approximately 112 in total). In reality, the ACCC has:[3]

- Received a total of 152 waiver applications to 30 April 2026, being an average of 38 applications per month (over four times the number of applications predicted).
- Received a total of only 76 Phase 1 applications, being an average of 8.9 per month (roughly 30% of the number predicted).
- Taken an average of 12 business days to grant a notification waiver.
- Taken an average of 19 business days to make a decision whether or not to approve a Phase 1 notified acquisition.

1 New merger control regime off to a positive start, Australian Competition and Consumer Commission, 9 April 2026.

2 Ibid.

3 Acquisitions Register, Australian Competition and Consumer Commission, 15 April 2026.

- Required only four notification applications to progress to Phase 2 review. In each case, the application involves either a highly concentrated market, a significant incumbent acquiring an important competitive constraint, or both.[4]
- Not referred any notification acquisitions to the Public Benefits Phase.
- Not blocked any notification acquisitions.
- Not imposed conditions on any of its approved notified acquisitions.

Filings have been spread across a wide range of industries with no single sector dominating. Construction, engineering and infrastructure services have been a prominent source of filings, reflecting the consolidation-driven and asset-intensive nature of those sectors. Significant filing activity has also occurred in healthcare and medical devices, professional services, transport and logistics, and financial services.

Waiver applications: The preferred pathway for low-risk deals

The waiver mechanism has emerged as the regime's most commercially attractive feature. With an average processing time for waiver notifications of only 12 business days, compared with 19 business days for Phase 1 approvals, and a filing fee of only AU$8,300 for a waiver application, compared with AU$56,800 for Phase 1 notification applications, merger parties have a compelling financial and efficiency incentive to pursue the waiver pathway wherever the transaction permits.[5] Speed compounds the advantage: waiver applications are assessed on the information provided at lodgement without pre-consultation or further investigation, are not subject to Australian Competition Tribunal review and, unlike notified acquisitions, can close immediately on approval without a 14-day waiting period. Given its advantages over a Phase 1 application in both cost and speed, the waiver pathway is emerging as the preferred pathway.

Notwithstanding the advantages, there are some risks to proceeding by way of waiver. Although the overwhelming majority of notification waivers are granted, it is important to note that 8% of waiver applications are not approved. If a waiver is rejected, a Phase 1 application will need to be made and the timeline for ACCC assessment recommences from the date the new application is lodged, potentially putting the parties up to three weeks behind their timetable.

For this reason, it is important for parties to take note of the limited circumstances where the ACCC recommends proceeding with a notification waiver – namely, where a transaction meets the mandatory thresholds but clearly involves low or no plausible competition risks.

This includes acquisitions where:

(a) There are no competitive overlaps between acquirer and target

(b) The merger parties have very low market shares

(c) There are no vertical or conglomerate issues

(d) There are no complex factual scenarios, e.g. a failing firm situation

The end of confidential pre-assessment

If notification is required or a waiver application is made the ACCC must publish the filing on the public register within one business day of lodgement. This fundamentally alters transaction sequencing. A party lodging a waiver application before public announcement now risks disclosing the transaction to competitors, customers, suppliers, employees and investors before the parties are commercially prepared to do so.

In practice, filing and public announcement must now usually occur simultaneously. This creates a structural tension that did not exist under the old regime. Parties want to commence the ACCC timetable as early as possible to minimise delay to completion, but doing so now requires accepting immediate public disclosure of the transaction.

The ACCC register as a competitive intelligence tool

The public register is not merely a transparency mechanism. It is rapidly becoming a sophisticated competitive intelligence resource. Within one business day of lodgement, competitors can identify that a rival has entered into an acquisition, the identity of the target, the industry involved, and the broad competitive overlap described in the filing. In many industries, this information is strategically sensitive and may expose a competitor's expansion strategy.

The register also creates a mechanism through which competitors can influence ACCC review processes. In Phase 1 reviews, the ACCC invites market participants to make submissions through its market consultation process, a rival alerted by the register may actively make submissions designed to slow, complicate or condition clearance.

Monitoring the register is, therefore, becoming a routine strategic activity for active market participants, not merely a legal compliance exercise.

The information burden

The waiver process is conducted entirely on the papers provided at the time of lodgement. If the material lodged does not allow the ACCC positively to conclude that no plausible competition concern exists, the waiver will be refused. This creates a substantial information burden for merger parties lodging waiver applications.

4 Ibid.

5 The filing fees under the new regime are cumulative in nature. A waiver application attracts a fee of AU$8,300, while a Phase 1 notification carries a fee of AU$56,800. Where a waiver application is unsuccessful and the acquiring party is required to proceed to formal notification, both fees are payable, bringing the total cost of filing to AU$65,100.

Waiver applications should be approached as substantive evidentiary exercises rather than simplified administrative filings, and must affirmatively demonstrate, on their face, that no plausible competition risk exists. Applications must include detailed evidence addressing local competitors, market shares, customer switching behaviour and proximity analysis. The ACCC will not fill gaps left by an incomplete or ambiguous application. In particular, geographic overlap cases require detailed local market analysis, mapping and competitive evidence.

In addition, for private equity (PE)-backed acquirers, the connected entity analysis required under the regime extends beyond the acquisition vehicle itself to the broader sponsor-controlled portfolio. A PE-backed bidder may, therefore, need to analyse whether any other portfolio company supplies overlapping or vertically related services in Australia.

This is not a trivial exercise for large sponsors with diverse Australian exposure. It requires ongoing portfolio mapping and updated internal tracking systems capable of rapidly identifying connected entities and relevant Australian revenue streams.

Final points of note

(1) **Front-load your information gathering** – Corporate development teams, PE sponsors and legal advisors should integrate competition screening into their standard M&A workflow (as many already do for the US, the EU, the UK and elsewhere). Parties should expect substantial document collection and a requirement for competition analysis before filing.

(2) **Approach waiver applications as evidence-intensive submissions** – The ACCC assesses waivers on the papers and cannot give applicants the benefit of the doubt on evidentiary gaps. A waiver application must affirmatively demonstrate, on its face, that no plausible competition risk exists. Geographic overlap cases demand detailed local market analysis, competitive mapping and supporting evidence, not high-level assertions.

(3) **Condition precedents** – Conditions precedent are being drafted with greater precision to reflect the statutory timelines and procedural mechanics of the new regime, including the Phase 1 and Phase 2 review periods, the circumstances in which timelines may be extended, and the obligations on each party to cooperate in progressing the regulatory process.

Even though only 5% of Phase 1 applications are referred to Phase 2, because Phase 2 filing fees can be disproportionate to deal value in smaller transactions (fees for Phase 2 start at AU$475,000 for transactions valued at AU$50 million or more; AU$855,000 for transactions from AU$50 million to AU$1 billion; and AU$1.595 million for deals over AU$1 billion), buyers are increasingly including express "off-ramp" termination rights if a deal looks like it will be escalated to Phase 2.

Conclusion

The early operation of the new regime suggests that the ACCC is attempting to balance expedited clearance for straightforward transactions with targeted scrutiny of more complex or uncertain deals. While the system appears to be functioning efficiently for low-risk acquisitions, the waiver determinations demonstrate that successful navigation of the regime depends heavily on preparation, evidentiary support and early competition analysis. In that respect, the regime may ultimately reshape Australian deal practice less through substantive enforcement outcomes than through the behavioural discipline it imposes on transaction planning and regulatory readiness.

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