SQUIRE PATTON BOGGS

New Mandatory Australian Merger Regime

Australia – November 2025

From 1 January 2026, Australia will move from its long-standing voluntary and informal merger clearance framework to a mandatory and suspensory merger control regime administered by the Australian Competition and Consumer Commission (ACCC) under the *Competition and Consumer Act 2010* (Cth) (CCA).

The move aims to improve transparency, consistency and early oversight, blocking anticompetitive mergers upfront, rather than after the fact, bringing Australia into line with jurisdictions like the EU and US.

Key Takeaways

Regulatory engagement – For international investors accustomed to the UK or EU regimes, the need to factor in regulatory engagement early in the process will be familiar. For many domestic Australian dealmakers, however, this represents a significant cultural shift. Competition analysis will need to form part of deal feasibility, valuation and risk allocation from day one.

Last date for informal review – The ACCC has indicated that it remains open until 1 December 2025 to receiving requests for informal review for very simple merger matters (raising no real competition concerns). With any assessment, there is a risk that it may not be considered in time, and a filing under the new regime may be required.

No more voluntary clearance – From 1 January 2026, notification is mandatory if the monetary thresholds are met, and parties cannot take steps to complete a transaction after this date until ACCC clearance is received or an exemption is granted. Transactions should include conditions precedent relating to ACCC clearance conditions where applicable.

No clearance = no deal – The stakes are high. Completing a notifiable acquisition without ACCC approval is a breach of the CCA and could trigger enforcement action and large penalties up to AU$50 million or AU$2.5 million for individuals. In addition, the transaction will be automatically void.

Increased time and cost – Transactions will be subject to formal Phase 1 (30 business days) and, if required, Phase 2 (up to 90 business days) reviews. We recommend parties plan for the time (and associated costs) to prepare filings and for possible remedies and negotiations. Substantial new fees apply to each phase and are cumulative. Parties involved in concentrated markets or global transactions, or that may be required to provide a remedy, are encouraged to engage in early prenotification conferral with the ACCC to reduce the need for follow-up information requests and to avoid delay in the determination period.

Information burden – Corporate development teams, private equity sponsors and legal advisors should integrate Australian competition screening into their standard M&A workflow (as many already do for the US, EU, UK and elsewhere). Parties should expect substantial document collection and a requirement for competition analysis prefiling. That means:

(a) Mapping relevant product and geographic markets early

(b) Collecting Australian revenue and customer data at the heads of agreement stage, including three-year Australian-based revenues, market share estimates and lists of customers/competitors

(c) Assessing cumulative acquisitions in the last three years for threshold purposes

Do You Need To Notify?

From 1 January 2026, ACCC notification is compulsory if your transaction is not exempt and the transaction both:

(1) Results in the acquirer gaining control over a target that is connected with Australia[1]

(a) "Control" means the capacity to determine the outcome of decisions regarding the target's financial and operating policies

(b) There is also a proposed new requirement to notify acquisitions of voting power above 20% (private companies) and 50% (all companies) thresholds to ensure ACCC review of minority acquisitions and changes in control

(2) Falls within one of the mandatory notification thresholds

The mandatory notification thresholds are:

(1) **Economy-wide threshold** – The combined Australian revenue of the merger parties (including the acquirer, the target and their connected entities)[2] is ≥ AU$200 million and either:

(a) Australian revenue of the target and its connected entities being acquired is ≥ AU$50 million

(b) The global transaction value is ≥ AU$250 million

(2) **Very large acquirer** – The Australian revenue of the acquirer and its connected entities is ≥ AU$500 million, and the target and its connected entities being acquired have Australian revenue of ≥ AU$10 million.

(3) **Cumulative acquisitions** – The combined Australian revenue of the merger parties (including the acquirer, the target and their connected entities) is ≥ AU$200 million (or AU$500 million for a very large acquirer), and the cumulative Australian revenue from acquisitions that predominantly involve the same or substitutable goods or services over three years is ≥ AU$50 million (or AU$10 million for a very large acquirer).

Importantly, acquisitions that do not meet the notification thresholds remain subject to section 50 of the CCA, which prohibits acquisitions of shares or assets that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.

Is Your Deal Exempt?

Where the target is an Australian listed company, listed scheme or large unlisted company (over 50 members), notification is not required if the transaction will result in the acquirer holding 20% or less voting power in the target.

Further, certain categories of acquisitions are exempt from mandatory notification, including:

(a) Certain land acquisitions, including for the purpose of developing residential premises or operating a land development or management business

(b) Extensions or renewals of leases of land

(c) Certain acquisitions by nominees and other trustees

(d) Acquisitions by an administrator, receiver, receiver and manager or liquidator

(e) Acquisitions related to routine trading and fundraising or capital-raising activities

(f) Routine acquisitions in clearing and settlement activities

(g) Acquisitions involving financial instruments, including derivatives, debt instruments, asset securitisation and security financing interests

(h) Acquisitions that occur automatically by operation of Australian law

Statutory Review Timeframes

Key timelines for ACCC review:

- **Phase 1** – Up to 30 business days ("fast-track" approval possible after 15 days for low-risk deals). The ACCC expects to approve approximately 80% of mergers in 15 to 20 business days via Phase 1 (or the notification waiver process).
- **Phase 2** – If competition concerns arise, the ACCC will conduct a more comprehensive assessment, which may take up to 90 additional business days.
- **Public benefit application** – If clearance is refused under Phase 2, parties can apply for approval based on net public benefit within 21 days, with assessment taking up to 50 additional business days.

Importantly, under the new regime, if the ACCC does not make a determination within the statutory timeframe (subject to any "stop-the-clock" extensions for information requests), the acquisition is automatically deemed approved, marking a major shift from the flexible timelines of the previous informal clearance system.

Be aware:

- To allow time for a potential review application to the Australian Competition Tribunal, a transaction must not be completed until at least 14 calendar days after receipt of the ACCC's approval. This means the earliest time for completion is 29 days after an effective notification is made.
- Notifications will go stale 12 months after a determination. To avoid having to renotify, the deal must be implemented within that period.

1 Shares or assets are "connected with Australia" if the share is in a company that carries on business in Australia, or the asset is used in, or part of, a business carried on in Australia.

2 "Connected entities" means related bodies corporate under the CCA, entities controlled by each other or by a common entity.

Can You Apply for a Waiver?

You can apply to the ACCC to waive the obligation to notify an acquisition where a transaction may meet the mandatory thresholds but clearly involves low competition risk, and detailed analysis is not required. 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 ACCC suggests that notification waivers may be used where parties are uncertain whether they are required to notify and wish to avoid the risk of failing to notify. However, the ACCC will decide a waiver application within 20 business days, which is similar to the timeframe for a fast-track or Phase 1 clearance. As a similar amount of information is required in the waiver application as for a fast-track application, the main difference between the processes at present is the cost, with a waiver costing only AU$8,300 (compared to AU$56,800 for a Phase 1 assessment).[3]

No Confidential Review

If notification is required or application is made for a notification waiver, the ACCC must publish the filing within one day of lodgement. Parties can still request confidentiality over parts of the application, but the ACCC no longer provides confidential preassessments for low-risk mergers. As a result, parties may need to wait until after relevant agreements are executed to apply, even for a waiver.

Foreign Investment Review Board (FIRB)

For acquisitions by foreign persons, FIRB approval continues to be a separate requirement. If an acquisition that needs FIRB approval has been notified to the ACCC, the ACCC's merger clearance decision will be a relevant consideration for FIRB's decision as to whether the investment is contrary to the national interest. If an acquisition needs FIRB approval but does not need to be notified (and has not been voluntarily notified) to the ACCC, investors will still need to provide a base level of information regarding competition when submitting the FIRB application. As part of its national interest assessment, Treasury may forward this information to the ACCC to provide a competition assessment.

New Filing Fees

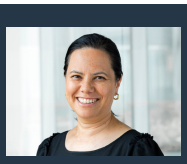
The cost of notification, both in fees and professional adviser expenses, will be material. Clients should be prepared for these costs to become a standard part of the transaction budget.

Waiver Application	AU$8,300
Notification of Acquisition – Phase 1	AU$56,800
Notification of Acquisition – Phase 2:	
1. If the global transaction value is ≤ AU$50 million	AU$475,000
2. If the global transaction value is > AU$50 million but ≤ AU$1 billion	AU$855,000
3. If the global transaction value is > AU$1 billion	AU$1,595,000
"Global transaction value" is the higher of the market value of the acquired shares/assets and the consideration received from the acquisition.	
Public Benefits Application	AU$401,000

Note – Fees are cumulative, so an acquisition that proceeds from Phase 1 to Phase 2 must pay the prescribed fee for each phase.

If you would like to discuss these changes or their potential impact on a proposed transaction in more detail, please contact a member of our team.

Contacts



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3 There is also a proposal that waiver applications will not be subject to review by the Australian Competition Tribunal, with the effect that they will be able to close immediately on receipt of approval unlike notified transactions, which are subject to a 14-day waiting period after approval.