

# Merger reforms: a mandatory and suspensory merger regime with the ACCC as decision maker

Elements of the regime are still being finalised. This document is current as at 1 April 2026. Please contact us for advice on specific transactions.

**All acquisitions of shares or assets (including legal or equitable interests) must be notified to the ACCC where the control and monetary thresholds are met. the target ‘carries on business’ in Australia. and no exemption applies.**

## What are the control thresholds?

For acquisitions of assets, the control thresholds do not apply. For acquisitions of shares, the transaction must satisfy one of the following tests:

Acquirer gains control over target	Acquirer’s voting power exceeds thresholds
<p>The transaction results in the acquirer gaining ‘control’ over the target. ‘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 <i>Corporations Act 2001</i> (Cth) and can include joint control with a minority shareholder.</p> <p>But, where the target is an Australian listed company, listed scheme or an unlisted company with more than 50 members, filing is not required if—following the transaction—the acquirer will hold ≤20% in voting power.</p>	<p>The acquisition causes the acquirer’s voting power to cross one of the below thresholds:</p> <ul style="list-style-type: none"> <li>Private company: from ≤20% to &gt;20%.</li> <li>Private or public company: from ≥20% to ≥50%.</li> <li>Public company (no current control): from &lt;20% to ≥50%.</li> <li>Public company (already controlled): from ≤20% to &gt;20%.</li> </ul> <p>Voting power is not the same as equity % so please take care when applying the thresholds.</p>

## What are the monetary thresholds?

The transaction must satisfy one of the following tests:

Acquisitions resulting in large or larger corporate groups		Acquisitions by very large corporate groups
<p>For acquisitions of:</p> <ul style="list-style-type: none"> <li>shares; or</li> <li>assets that comprise all or substantially all of the assets of a business</li> </ul> <p><small>NB: or discrete assets that, together with previously acquired discrete assets, comprise all the assets of a business.</small></p>	<ul style="list-style-type: none"> <li>Combined Australian revenue of the acquirer and target is at least <b>A\$200m</b>; AND</li> <li>any of the below: <ul style="list-style-type: none"> <li>the target has Australian revenue of at least <b>A\$50m</b>; OR</li> <li>the cumulative Australian revenue from the target and any similar acquisitions in the last three years is at least <b>A\$50m</b>; OR</li> <li>the transaction value is at least <b>A\$250m</b>.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Australian revenue of the acquirer is at least <b>A\$500m</b>; AND</li> <li>any of the below: <ul style="list-style-type: none"> <li>the target has Australian revenue of at least <b>A\$10m</b>; OR</li> <li>the cumulative Australian revenue from the target and any similar acquisitions in the last three years is at least <b>A\$10m</b>; OR</li> <li>the transaction value is at least <b>A\$250m</b>.</li> </ul> </li> </ul>
<p>For acquisitions of assets that do <b>not</b> comprise all or substantially all of the assets of a business (discrete assets)</p>	<ul style="list-style-type: none"> <li>Australian revenue of the acquirer is at least <b>A\$200m</b>; AND</li> <li>the transaction value is at least: <ul style="list-style-type: none"> <li><b>A\$200m</b>.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Australian revenue of the acquirer is at least <b>A\$500m</b>; AND</li> <li>the transaction value is at least: <ul style="list-style-type: none"> <li><b>A\$50m</b>.</li> </ul> </li> </ul>

‘Transaction value’ is the higher of the market value of or consideration for all the acquired shares and assets (globally, not just in Australia).

## How do you measure Australian revenue?

Australian revenue means gross revenue, according to most recent 12-month financial accounts, from transactions/assets within or into Australia.

<p><b>Revenue of the acquirer</b></p> <p>Include the Australian revenue of the acquirer and the acquirer’s ‘connected entities’.</p>	<p><b>Connected entities</b></p> <p>Two entities are connected if:</p> <ul style="list-style-type: none"> <li>they are ‘related bodies corporate’;</li> <li>one controls the other (including joint control with an associate, except where associate of an unlisted entity by virtue of minority protection rights only); or</li> <li>they are both controlled by a common entity.</li> </ul>	<p><b>Revenue of the target</b></p> <p>For <b>share</b> acquisitions, include the Australian revenue of the target and any of the target’s ‘connected entities’ being indirectly acquired.</p> <p>For <b>asset</b> acquisitions where the assets comprise all or substantially all of the assets of a business, use the Australian revenue attributable to the business. For all other asset acquisitions, the tests look at the transaction value rather than the target’s revenue.</p>
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### Cumulative revenue of serial acquisitions

The monetary thresholds include a ‘cumulative Australian revenue’ limb to address serial acquisitions. This limb aggregates the revenue of the proposed target with the revenue of previous targets acquired by the acquirer over the last three years in the same industry.

This includes previous targets acquired by a ‘connected entity’ of the acquirer. Certain previous acquisitions can be excluded from the accumulation: (i) notified acquisitions (except transactions that were notified under the serial acquisitions limb); (ii) where the target’s revenue was less than A\$2m; (iii) discrete asset acquisitions of less than A\$2m market value; (iv) targets not carrying on business in Australia; (v) targets the acquirer has not begun (and cannot begin) to control or has since divested or disposed of; and (vi) discrete asset acquisitions unless together with the current acquisition they comprise all or substantially all of the assets of a business.

# When does a target 'carry on business' in Australia?

For acquisitions of shares (or interests in entities), the target entity must 'carry on business' in Australia. For acquisitions of assets, the asset must be used in or form part of a business 'carried on' in Australia.

Whether a business is carried on in Australia is a question of fact and degree. Relevant (but not determinative) indicia include:

- foreign company operating through a subsidiary in Australia
- physical presence in Australia
- acts with system and regularity
- number, awareness, targeting of and any sales to Australian customers
- the existence of property in Australia
- contractual relationships with (incl. purchases from) Australian companies.

## What acquisitions are exempt?

*NB: Exemptions can be highly technical. Obtain legal advice in case of uncertainty.*

### Certain routine and internal restructuring transactions

1. Acquisitions in the ordinary course of business, other than patents

2. Internal restructures and reorganisations

### Certain land acquisitions

3. Acquisitions of a legal or equitable interest in land for the purpose of developing residential premises

Residential premises:

- occupied for residential accommodation; or
- intended to be occupied, and capable of being occupied as a residence or for residential accommodation.

Examples include houses, apartments, townhouses, retirement villages and student accommodation.

4. Acquisitions of land for a business primarily engaged in buying, selling, leasing or developing land

- Acquirer carrying on a business primarily engaged in buying, selling, leasing or developing land; and
- purpose is not to operate a commercial business on the land, unless ancillary to the primary property business (eg property management, concierge, facility management).

5. Land entities: acquisitions of an interest in an entity that holds the land (and no other substantive non-cash assets) for the above two purposes

6. Acquisitions of a subsequent interest in land or quasi-land where the acquirer already holds an equitable interest in the same land/right

- The land or quasi-land right must be materially the same.
- The ownership proportions must remain the same.
- The previous acquisition must have been notified, waived or acquired prior to 1 Jan 2026. Section 189 letters do not count as notification.

*NB: a quasi-land right is a mining, quarrying or prospecting right, a water entitlement, or a right in relation to land for forestry operations.*

7. Acquisitions of a land development right, which would have been covered by another exemption if it were an equitable right

- Includes a right to **develop** or **redevelop** (eg construct, refurbish, expand or subdivide).
- Only applies where the rights relate to land development purposes covered by another property exemption, ie unrelated or broader commercial rights are not covered.

8. Acquisitions that are an extension or renewal of a lease

Includes, for example, situations where:

- a lease is terminated and a new lease is granted over the same land.
- an option to renew is exercised.

Does not apply where there are changes in lease terms that materially alter the scope or nature of the interest or change in the relevant parcel of land.

9. Acquisitions that relate only to a sale and leaseback arrangement

- Where property is sold and leased back to the vendor.
- Example: a retailer sells the freehold title to land where it is operating a store and leases it back to itself to continue operating the store.
- Does not cover any ancillary or additional acquisitions.

### Certain financial market acquisitions

10. Certain routine acquisitions in financial market infrastructure

Includes (i) clearing and settlement facilities, and (ii) exercising a contractual right to close out transactions, set-off or combine accounts.

11. Certain routine trading and fundraising / capital-raising activities

Includes rights issues, dividend reinvestments, underwriting of fundraising, share buy-backs, derivatives (which don't result in control) and FX contracts.

12. Certain routine acquisitions in financial market infrastructure

Includes (i) debt instruments, debt interests and loans, (ii) security interests (excl. enforcement of the interest except where (iv) applies), (iii) acquisition in asset securitisation arrangements (where acquisition does not result in control) and securities financing transactions and (iv) certain arms-length acquisitions in the ordinary course of providing financial accommodation.

13. Certain acquisitions by nominees and other trustees

Includes certain acquisitions (i) of security interests by a bare trustee, (ii) in the ordinary course of providing custodial or depository services and (iii) by a nominee, eg upon the conversion of regulatory capital instruments.

### Certain acquisitions by superannuation entities

14. The transfer of members' benefits between superannuation entities

15. Acquisitions resulting from a change of trustee of a superannuation entity

### Certain other acquisitions

16. Acquisitions as an external administrator or by persons in an analogous statutory capacity

17. Acquisitions that occur by automatic operation of Australian law

## What are the filing formalities?

- **Who files?** The party or parties acquiring the shares or assets.
- **When can you file?** Once the acquisition is not 'speculative'—eg the transaction documents or a non-binding indicative offer have been signed. Confidential pre-notification discussions can commence earlier. For competitive auctions, public reviews won't commence until the bid is awarded, but bidders can pre-notify before then.
- **Is there a form?** Yes, both a short-form and long-form one, depending on the market shares of the parties. See below for more info.
- **Will the notification be public?** Yes. Following notification, the ACCC will publish on its website a summary of the proposed transaction. The ACCC must keep the website updated with the status and outcome of the review, including (for Phase 2) a summary of the ACCC's competition concerns. The notification itself and third-party submissions will not be published. The ACCC can withhold or redact commercially sensitive info.

## How will the ACCC assess acquisitions?

### 'Substantial lessening of competition' test

- First, the ACCC assesses whether the transaction substantially lessens competition. This can include creating, strengthening or entrenching a substantial degree of power in a market (in addition to 'preventing or hindering competition').
- The ACCC can also consider the cumulative effect of similar acquisitions by the merging parties in the three calendar years prior to the notification date, whether those prior acquisitions were individually notifiable or not.

### Public benefit

- For transactions that do not satisfy the competition assessment, and if the parties apply, the ACCC will consider in the alternative if the acquisition would result, or be likely to result, in a net public benefit.

## Is there a fee?

Yes, a fee will be payable at each stage of the review:

Stage	Fee
<b>Notification waiver application</b>	A\$8,300
<b>Phase 1 assessment</b>	A\$56,800
<b>Phase 2 assessment</b>	
▪ If transaction value ≤ A\$50 million	A\$475,000
▪ If A\$50 million < transaction value ≤ A\$1 billion	A\$855,000
▪ If transaction value > A\$1 billion	A\$1,595,000
<b>Public benefits application</b>	A\$401,000
<b>Tribunal review</b>	up to A\$2,950,000

NB: no additional fees for timeline extensions.

## What to include in the forms?

Waiver form	Short form	Long form	Public benefits
<ul style="list-style-type: none"> <li>▪ Description of parties, rationale, transaction, consideration and main industries etc</li> <li>▪ Type of acquisition (ie vertical, horizontal, conglomerate)</li> <li>▪ Market definition</li> <li>▪ Overlaps, one year of market shares, ANZSIC codes</li> <li>▪ Non-compete provisions</li> <li>▪ Transaction documents</li> <li>▪ Accounts</li> <li>▪ Declaration.</li> </ul>	<p>Waiver form material plus:</p> <ul style="list-style-type: none"> <li>▪ Details of acquisitions in last three years for each party (NB: any % interest, not just control)</li> <li>▪ Market rationale and key suppliers</li> <li>▪ Three years of market shares</li> <li>▪ Competitor and customer contacts</li> <li>▪ Detailed structure charts (including directors).</li> </ul>	<p>Short form material plus:</p> <ul style="list-style-type: none"> <li>▪ Non-controlling shareholdings / cross-directorships</li> <li>▪ Sales process / alternative bids</li> <li>▪ Barriers to entry (inc \$ estimates, exits/entry to market in three years, etc)</li> <li>▪ Horizontal / vertical / conglomerate '<b>appendices</b>'</li> <li>▪ Third-party data / reports</li> <li>▪ Two years internal board / shareholder documents re deal or markets + misc.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Identification of public benefits, including supporting information/evidence</li> <li>▪ Identification of known or reasonably ascertainable public detriments</li> <li>▪ Reasons for there being a <i>net</i> public benefit</li> <li>▪ Contact details of interested parties</li> <li>▪ Declaration.</li> </ul>

NB: Lists are not exhaustive.

### When to use waiver form (per ACCC interim guidance)

- Straightforward applications (ie plainly do not give rise to competition issues or risk of harm, and can be decided on the papers).
- No or limited (<5% combined share) overlaps, market definition not controversial and market concentration is low
  - No vertical / conglomerate issues
  - No complex scenarios or legal issues
  - Consumer harm unlikely.

### When to use long form (per ACCC guidance)

#### Horizontal merger

≥40% combined share AND ≥2% increment

40% < combined share ≥ 20% AND ≥5% increment

#### Vertical merger

≥30% upstream AND ≥30% downstream

#### Conglomerate merger

One party ≥ 30% share

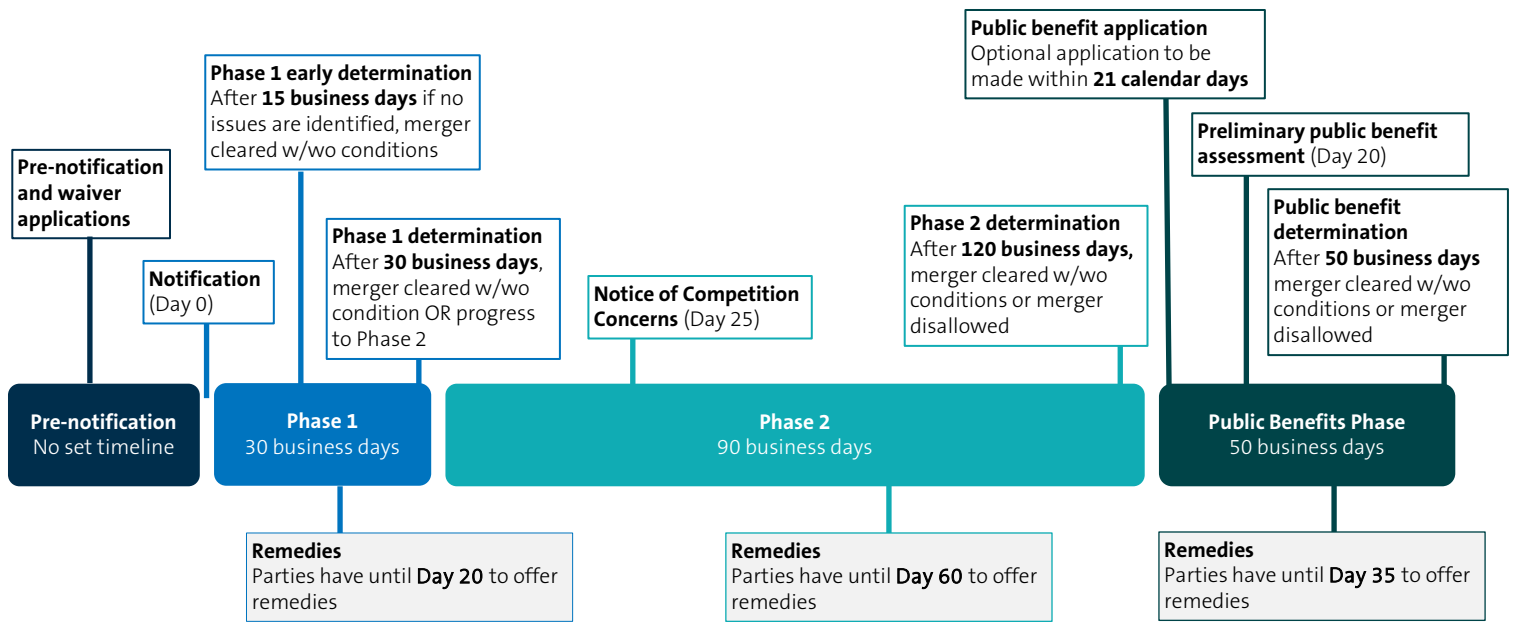
OR

- One party is a maverick
- Party developing significant product merges with actual or potential competitor.

NB: Apply market definition giving largest % share or increment. The short form can be used for acquisitions involving only an interest in land.

# What are the review process timeframes?

NB: All timeframes are in business days unless otherwise stated.



**Standstill for appeals:** Where the ACCC clears the transaction, parties must still wait 14 calendar days after the ACCC's determination to allow for the Tribunal appeal period to elapse before proceeding with the transaction.

**Appeals:** Parties (including third parties with sufficient standing) may apply for limited merits review, within 14 calendar days of the ACCC's assessment, before the Australian Competition Tribunal. Merits review can take 45–90 calendar days (extendable by up to 150 calendar days).

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