

The impact of the ACCC mandatory merger regime on real estate transactions

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

All acquisitions of legal or equitable interests in shares (including units in unit trusts) or assets 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. This includes acquisitions of real estate, whether at an asset level (including leases, agreements for lease and options for land), or by way of an acquisition of the shares or units in the owner of the relevant asset.

Acquisitions at an asset level

Control threshold

For the purposes of a real estate transaction where the acquisition is at the asset level, the 'control' threshold is not relevant.

Monetary thresholds

Where the acquisition occurs at the asset level, for the purposes of determining whether the monetary thresholds are met, the 'target' is the counterparty to the acquisition (eg, vendor or landlord).

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
For acquisitions of: <ul style="list-style-type: none"> shares; or assets that comprise all or substantially all of the assets of a business <small>NB: or discrete assets that, together with previously acquired discrete assets, comprise all the assets of a business.</small>	<ul style="list-style-type: none"> Combined Australian revenue of the acquirer and target is at least A\$200m; AND any of the below: <ul style="list-style-type: none"> the target has Australian revenue of at least A\$50m; OR the cumulative Australian revenue from the target and any similar acquisitions in the last three years is at least A\$50m; OR the transaction value is at least A\$250m. 	<ul style="list-style-type: none"> Australian revenue of the acquirer is at least A\$500m; AND any of the below: <ul style="list-style-type: none"> the target has Australian revenue of at least A\$10m; OR the cumulative Australian revenue from the target and any similar acquisitions in the last three years is at least A\$10m; OR the transaction value is at least A\$250m.
For acquisitions of assets that do not comprise all or substantially all of the assets of a business (discrete assets)	<ul style="list-style-type: none"> Australian revenue of the acquirer is at least A\$200m; AND the transaction value is at least: <ul style="list-style-type: none"> (until 31 Mar 2026) A\$250m. (from 1 Apr 2026) A\$200m. 	<ul style="list-style-type: none"> Australian revenue of the acquirer is at least A\$500m; AND the transaction value is at least: <ul style="list-style-type: none"> (until 31 Mar 2026) A\$250m. (from 1 Apr 2026) A\$50m.

'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.

Revenue of the acquirer Include the Australian revenue of the acquirer's 'connected entities'.	Connected entities Two entities are connected if: <ul style="list-style-type: none"> they are 'related bodies corporate'; 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 they are both controlled by a common entity. 	Revenue of the target For share acquisitions, include the Australian revenue of any of the target's 'connected entities' being indirectly acquired. For asset 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.
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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. Filing is not required for 'small acquisitions' (ie, target less than A\$2 million in Australian revenue or market value).

When does a target '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.

Exemptions which are relevant to real estate acquisitions of assets

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

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

What constitutes 'the ordinary course of business' is a legal and technical test well established by the ACCC.

It does not refer to the acquirer's, or anyone else's, particular business. It is not a requirement that the specific person making an acquisition has made similar acquisitions recently or in the past for the acquisition to be in the ordinary course of business.

Examples given by the ACCC of acquisitions made in the ordinary course of business include the acquisition of an interest in land for the purpose of an office, headquarters or other routine trading activities, the acquisition of office towers for the purposes of commercial property investment, a property development company acquiring land to develop residential or commercial property, retailers leasing or acquiring land for a warehouse to store their inventory, a manufacturer leasing or acquiring land for a new manufacturing facility, an energy generator acquiring land for a solar farm, or an energy distributor acquiring land to build pylons on.

In our view, 'ordinary course of business' can be extended to the acquisition of land for a wind farm or battery site or acquisitions of easement for transmission lines. However, it is not intended to capture 'land banking' or certain transfers of land between competitors.

2. 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 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.

6. 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.

3. 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. 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.

7. 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 continue operating the store.
- Does not cover any ancillary or additional acquisitions.

Acquisitions of shares or units

Control threshold

For acquisitions of shares or units, the transaction must satisfy one of the following tests.

Acquirer gains control over target

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 *Corporations Act 2001* (Cth).

But, where the target is an Australian listed company, listed scheme or a large unlisted company (ie >50 members), filing is not required if—following the transaction—the acquirer will hold ≤20% in voting power.

Acquirer's voting power exceeds thresholds

(From 1 Apr 2026) The acquisition causes the acquirer's voting power to cross one of the below thresholds:

- Private company:** from ≤20% to >20%.
- Private or public company:** from ≥20% to ≥50%.
- Public company (no current control):** from <20% to ≥50%.
- Public company (already controlled):** from ≤20% to >20%.

Monetary thresholds

Where the acquisition occurs at the asset level, for the purposes of determining whether the monetary thresholds are met, the 'target' is the entity or trust that owns the real estate asset.

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

For acquisitions of shares or units, the target entity must 'carry on business' in Australia.

Exemptions which are relevant to real estate acquisitions of shares or units

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

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

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

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.

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).

Key remaining issues

Competitive auction processes

Under the current merger laws, the ACCC public review process can only begin where there is an intention to enter into transaction agreements, meaning that if a competitive auction process is ongoing, the ACCC cannot review until there is exclusivity or a preferred bidder. However, consultation on the short form or the review of a waiver application can commence earlier.

Automatic voiding

An acquisition is automatically void if implemented without ACCC clearance. The Government accepts this is an issue but will not change this until after March 2026, at the earliest. Provided the contract is properly drafted, it is the acquisition itself that will be void, rather than the entire contract. This means that provisions such as warranties and indemnities (including in connection with the requirement for ACCC clearance) would survive.

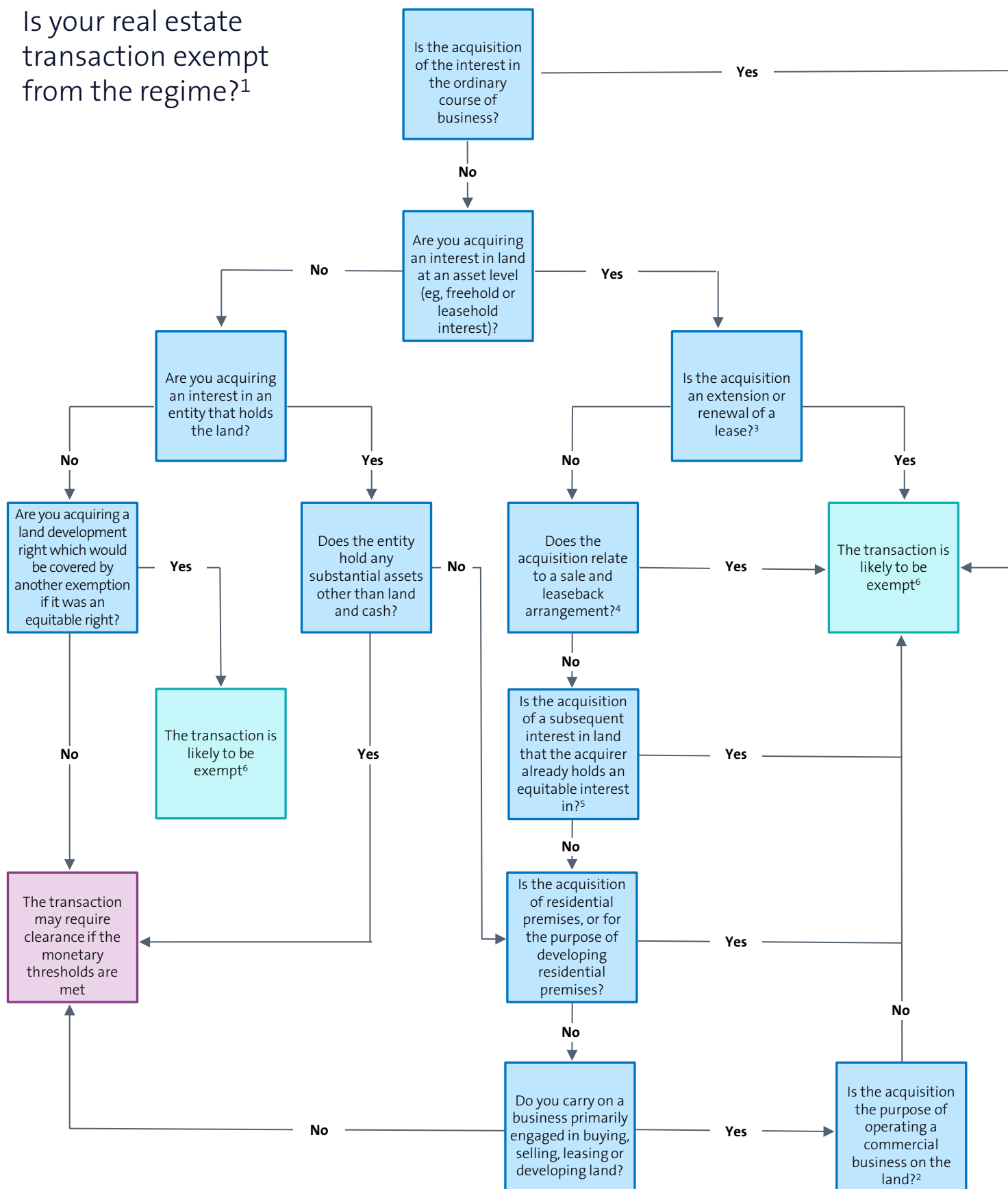
Joint control

Under Australian merger laws, joint control means any minority interest where there is a shareholders' or unitholders' agreement in place which determines the composition of the board or the conduct of the affairs of the target (even if individual shareholders/unitholders do not obtain control or joint control). This means acquisitions of minority interests without 'control' may need to be notified if a shareholders' or unitholders' agreement is in place and the monetary thresholds are satisfied. It is still not clear if or how the Government will amend this. Waivers could be sought in these circumstances. For real estate transactions, this is applicable where an interest in land is being acquired through the entity that owns the land.

Global transaction threshold

A filing is required where the \$250 million global transaction threshold is satisfied (as well as the combined \$200 million Australian turnover threshold) if the target is 'connected with Australia.' There is no de minimis exception. We requested the Government add a \$2 million target turnover minimum threshold to avoid the need to file where the target has no material presence in Australia. Despite this lobbying, we do not believe it is likely to introduce one at this stage.

Is your real estate transaction exempt from the regime?¹



1. Please contact us for advice on specific transactions.
2. Unless the business is ancillary to a primary property business (e.g. property management, concierge, facility management), as opposed to a separate commercial business.
3. 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.
4. Applies where the property is sold and leased back to the vendor. Does not cover any ancillary or additional acquisitions.
5. The land must be materially the same size; the ownership proportions must remain the same and the previous acquisition must have been notified.
6. Unless the acquisition is affected by a targeted notification requirement for specified classes of acquisitions (e.g. the supermarkets class).

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
Notification waiver application	A\$8,300
Phase 1 assessment	A\$56,800
Phase 2 assessment	
▪ 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
Public benefits application	A\$401,000
Tribunal review	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"> ▪ Description of parties, rationale, transaction, consideration and main industries etc ▪ Type of acquisition (ie vertical, horizontal, conglomerate) ▪ Market definition ▪ Overlaps, one year of market shares, ANZSIC codes ▪ Non-compete provisions ▪ Transaction documents ▪ Accounts ▪ Declaration. 	Waiver form material plus: <ul style="list-style-type: none"> ▪ Details of acquisitions in last three years for each party (NB: any % interest, not just control) ▪ Market rationale and key suppliers ▪ Three years of market shares ▪ Competitor and customer contacts ▪ Detailed structure charts (including directors). 	Short form material plus: <ul style="list-style-type: none"> ▪ Non-controlling shareholdings / cross-directorships ▪ Sales process / alternative bids ▪ Barriers to entry (inc \$ estimates, exits/entry to market in three years, etc) ▪ Horizontal / vertical / conglomerate 'appendices' ▪ Third-party data / reports ▪ Two years internal board / shareholder documents re deal or markets + misc. 	<ul style="list-style-type: none"> ▪ Identification of public benefits, including supporting information/evidence ▪ Identification of known or reasonably ascertainable public detriments ▪ Reasons for there being a <i>net</i> public benefit ▪ Contact details of interested parties ▪ Declaration.

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

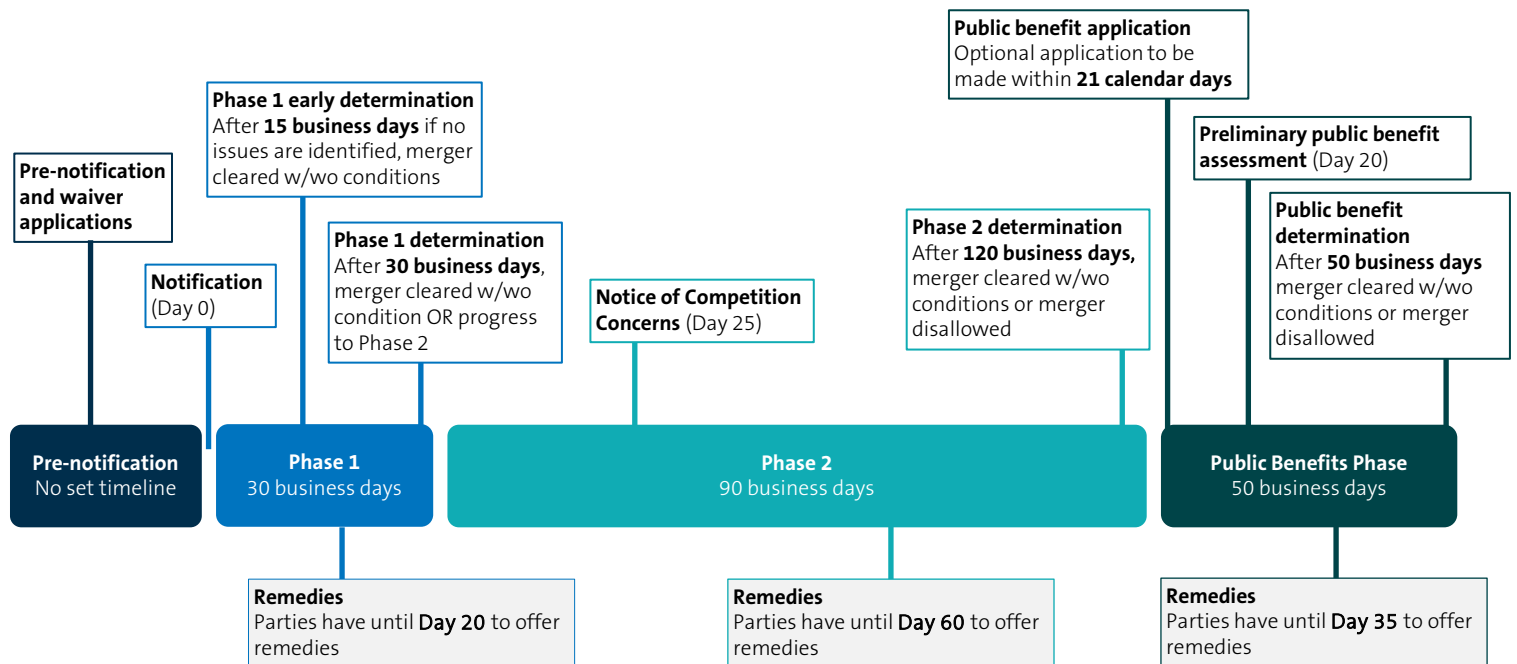
OR

- 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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