

ACCC Mergers Update

Australia's new mandatory
merger regime

PREPARED BY

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AGENDA

1. Overview of reforms
2. When is notification mandatory
3. Notification thresholds
4. Potentially notifiable IP transactions
5. Notification costs and timeframes
6. Waivers

The ACCC's view

"We welcome the Treasurer's announcement today that the government will move to strengthen Australia's merger laws, which will benefit Australian consumers and businesses of all sizes, as well as the wider economy.

Higher prices, less choice and less innovation can result from weakened competition. Stronger merger laws are critical to ensure anti-competitive mergers do not proceed".

ACCC Chair Gina Cass-Gottlieb

10 April 2024

Overview of reforms

- Mandatory notification obligations for certain acquisitions
- Notifiable acquisitions must not be put into effect until cleared
- Notifiable acquisitions put into effect without clearance are void
- Three-stages of review
- Australian Competition Tribunal can review ACCC decisions
- New public register of notified acquisitions

When is notification mandatory?

1. An acquisition of **shares** or **assets**
2. The acquisition is of a prescribed type:
 - Acquisition of control
 - Minority share acquisition meeting voting thresholds
 - Acquisition of discrete assets: from 1 April 2026
3. a **notification threshold** has been met as at **contract date**
4. an **exception** does not apply / **no waiver** has been obtained

When is notification mandatory?

Carve-outs

1. Internal restructure / re-organisation
2. Acquisition of shares in listed company resulting in voting power of <20%
3. Acquisition in ordinary course of business – but **patents** no longer included

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Core financial thresholds

Circumstance	Threshold
Acquisitions resulting in large or larger corporate groups	The combined Australian Revenue of merger parties is <u>\$200m or more</u> AND At least one of the following applies: <ul style="list-style-type: none"> • The Target's Australian Revenue is <u>\$50m or more</u> • The total transaction value is <u>\$250m or more</u>
Acquisitions by very large corporate groups	The Acquirer's group Australian Revenue is <u>\$500m or more</u> AND The Target's Australian Revenue is <u>\$10m or more.</u>

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Core financial thresholds

Creeping or serial acquisitions

Threshold	
Medium to large merged firms The combined Australian revenue of the merger parties is at least <u>\$200m or more</u> AND The cumulative Australian revenue from acquisitions in the <u>past 3 years</u> that involves the same or substitutable goods or services is <u>\$50m or more</u>	Very large acquirers The acquirer group's Australian revenue <u>\$500m or more</u> AND The cumulative Australian revenue from acquisitions in <u>past 3 years</u> that involves the same or substitutable goods or services is <u>\$10m or more</u>
BUT do not include acquisitions of previous shares or assets in cumulative assessment where: <ul style="list-style-type: none"> • acquisitions were previously notified to ACCC; • acquisitions meet the 'small acquisition test' (<u>less than \$2m</u> in AU revenue) • acquisitions are not 'connected with Australia' 	

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Notification thresholds from 1 April 2026

Applies to **discrete asset acquisitions**

Circumstance	Threshold
Acquisitions by <u>large</u> corporate groups – high value asset	The Acquirer's group Australian Revenue is <u>\$200m or more</u> <u>AND</u> The transaction value is <u>\$200m or more.</u>
Acquisitions by <u>very large</u> corporate groups – lower value asset	The Acquirer's group Australian Revenue is <u>\$500m or more</u> <u>AND</u> The transaction value is <u>\$50m or more.</u>

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Potentially notifiable IP transactions

- Acquisition of well-known consumer brand
- Acquisition of core technology
- IP licences (incl. exclusive licence for standing)
- Settlement agreements (where assignment or licence granted)
- Research / collaboration agreements / JV agreements

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Notifications: ACCC costs and timeframes

Phase	Costs	Indicative timeframes
1	\$56,000 (greater if transaction is more complex)	15-30 days
2	\$475,000 - \$1,595,000, depending on transaction size	Additional 90 days
3	\$401,000	Additional 50 days

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Waivers

- ACCC can determine that a proposed acquisition does not need to be notified even though financial thresholds are technically satisfied
- ACCC may grant waiver where satisfied that acquisition is unlikely to raise competition concerns
- No immunity from s 50 acquisitions that substantially lessen competition

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Key takeaways

- Consider whether IP transactions could potentially trigger notification obligation
- Develop robust accounting methods for attributing Australian Revenue to certain assets (to allow them to assess when thresholds are met)
- Start keeping records or logs of acquisitions involving similar assets or technologies (to ensure that they are not caught by the serial notification thresholds)
- Factor in timeframes and cost of notification into transaction timelines and costs

Presenters



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